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Canada. Royal commission on transportation.

Preliminary organizational meeting. 1959

1961





**ROYAL COMMISSION**

**ON**

**TRANSPORTATION**

**PRELIMINARY  
ORGANIZATIONAL  
MEETING**

**HELD AT**

**OTTAWA**

**17th & 18th SEPT. 1959**

**OFFICIAL REPORTERS  
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TORONTO, ONTARIO

## ROYAL COMMISSION ON TRANSPORTATION

Proceedings of preliminary organizational meeting held in the Railway Committee Room, House of Commons, Ottawa, Ontario, on the 17th and 18th of September, 1959.

### COMMISSION

Honourable C. P. McTague, Q.C.	Chairman
Mr. H. Anscomb	Member
Mr. A. H. Balch	Member
Mr. R. Gobeil	Member
Mr. M. A. MacPherson	Member
Mr. H. Mann	Member
Mr. A. Platt	Member

### COMMISSION COUNSEL

Mr. A. G. Cooper, Q.C.  
Mr. G. S. Cumming

Mr. F. W. Anderson	Secretary
Major N. Lafrance	Assistant Secretary



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THE CHAIRMAN: Gentlemen, if we can come to order I would like the Secretary to read the Commission, and file it as the first exhibit.

THE SECRETARY:

"Commission under Part I of the Inquiries Act, appoint-  
"ing The Honourable Charles P. McTague, Herbert Anscomb  
"et al, Commissioners to inquire into and report upon  
"the problems relating to railway transportation in  
"Canada.

"Dated . . . . . 8th June, 1959

"Recorded . . . . . 8th June, 1959.

"Film 83 Document 263.

(Signed) "H. W. Doyle"

for Registrar General of Canada.

"Refer. No. 158803."

---

" Vincent Massey

" CANADA

"ELIZABETH THE SECOND, by the Grace of God of the  
"United Kingdom, Canada and Her other Realms and  
"Territories QUEEN, Head of the Commonwealth,  
"Defender of the Faith.

"W. R. Jakkett

"DEPUTY ATTORNEY GENERAL,  
CANADA"







" TO ALL TO WHOM these Presents shall come or  
"whom the same may in anywise concern,

GREETING:

"WHEREAS pursuant to the provisions of Part I of  
"the Inquiries Act, chapter 154 of the Revised  
"Statutes of Canada, 1952, His Excellency the  
"Governor in Council, by Order P.C. 1959-577 of the  
"thirteenth day of May, in the year of Our Lord  
"one thousand nine hundred and fifty-nine, a copy  
"of which is hereto annexed, has authorized the  
"appointment of Our Commissioners therein and here-  
"inafter named to examine and make recommendations  
"upon

- "(a) inequities in the freight rate structure,  
their incidence upon the various regions of  
Canada and the legislative and other changes  
that can and should be made, in furtherance  
of national economic policy, to remove or  
alleviate such inequities;
- "(b) the obligations and limitations imposed upon  
railways by law for reasons of public policy,  
and what can and should be done to ensure a  
more equitable distribution of any burden  
which may be found to result therefrom;
- "(c) the possibilities of achieving more economi-  
cal and efficient railway transportation;
- "(d) whether, and to what extent, the Railway Act  
should specify what assets and earnings of







railway companies in businesses and investments other than railways should be taken into account in establishing freight rates; and

"(e) such other related matters as the Commissioners consider pertinent or relevant to the specific or general scope of the inquiry,

"and has conferred certain rights, powers and

"privileges upon Our said Commissioners as will by

"reference to the said Order more fully appear,

" NOW KNOW YE that, by and with the advice of

"Our Privy Council for Canada, we do by these

"Presents nominate, constitute and appoint Herbert

"Anscomb, Esquire, of the City of Victoria, in

"the Province of British Columbia; Archibald H.

"Balch, Esquire, of the City of Ottawa, in the

"Province of Ontario; Rene Gobeil, Esquire, of

"the City of Quebec, in the Province of Quebec;

"Murdoch Alexander MacPherson, Esquire, Q.C., of

"the City of Regina, in the Province of Saskatchewan;

"Howard Mann, Esquire, of the City of Moncton,

"in the Province of New Brunswick; Honourable

"Charles P. McTague, of the City of Toronto, in

"the Province of Ontario; and Arnold Platt,

"Esquire, of the City of Lethbridge, in the Province of Alberta, to be Our Commissioners to

"conduct such inquiry.

" TO HAVE, hold, exercise and enjoy the said







"office, place and trust unto the said Herbert  
"Anscomb, Archibald H. Balch, Rene Gobeil, Murdoch  
"Alexander MacPherson, Howard Mann, Charles P.  
"McTague and Arnold Platt, together with the rights,  
"powers, privileges and emoluments unto the said  
"office, place and trust of right and by law apper-  
"taining during Our pleasure.

"       AND WE DO hereby direct that the scope of  
"this Commission shall not extend to the perfor-  
"mance of functions which under the Railway Act are  
"within the exclusive jurisdiction of the Board  
"of Transport Commissioners.

"       AND WE DO hereby authorize Our said Commis-  
"sioners to exercise all the powers conferred upon  
"them by section 11 of the Inquiries Act and be  
"assisted to the fullest extent by government de-  
"partments and agencies.

"       AND WE DO hereby authorize Our said Commis-  
"sioners to adopt such procedure and methods as  
"they may from time to time deem expedient for the  
"proper conduct of the inquiry and sit at such  
"times and at such places in Canada as they may  
"decide from time to time.

"       AND WE DO hereby authorize Our said Commis-  
"sioners to engage the services of such counsel,  
"staff and technical advisers as they may require  
"at rates of remuneration and reimbursement to be  
"approved by the Treasury Board.







" AND WE DO hereby require and direct Our said  
"Commissioners to report their findings to Our  
"Governor in Council.

" AND WE FURTHER appoint the Honourable Charles  
"P. McTague to be Chairman of Our said Commissioners.

" IN TESTIMONY WHEREOF We have caused these Our  
"Letters to be made Patent and the Great Seal of  
"Canada to be hereunto affixed.

"WITNESS: Our Right Trusty and Well-beloved  
Counsellor, Vincent Massey, Member of Our  
Order of the Companions of Honour, Governor  
General and Commander-in-Chief of Canada.

" AT OUR GOVERNMENT HOUSE, in Our City of Ottawa,  
"this eighth day of June in the year of Our Lord  
"one thousand nine hundred and fifty-nine and in  
"the eighth year of Our Reign.

BY COMMAND,

(Signed) "C. Stein"

UNDER SECRETARY OF STATE"

---EXHIBIT NO. 1: Commission.

THE CHAIRMAN: Gentlemen, our proceedings  
today and tomorrow will be along the lines of working  
out a programme, and largely be procedural matters.  
In that connection may I say that we hope that we can  
conduct the hearings and the affairs of the Commission  
on a basis that does not follow too closely the opera-  
tions of court room or a rate hearing, or anything of







that kind; that is, we are here to try and, to the best of our ability, form some views as to what, in connection with this problem of transportation, can best be worked out for the good of the country as a whole.

The first matter upon which we would like to have submissions now is in connection with our Reference itself, by anybody who cares to present the view of his clients or whatever association he is connected with, and limit your submissions at this time to that subject only; namely, the interpretation of the Order in Council, the scope of the Commission.

In that connection, and subject to any representations that counsel might care to make, we would suggest that perhaps counsel for the railways, in whatever order you are agreeable to, might open those submissions in regard to the Order in Council, its scope -- what is really referred to us. Then, that might be followed by counsel from the provinces in any order that they care to agree upon among themselves. If Commission counsel will make submissions, if he feels disposed to after that has taken place, of course, there will be an opportunity of Reply as far as railway counsel are concerned.

If that seems to meet with your approval in the first place, then perhaps we can have submissions from the railway counsel.

MR. SINCLAIR: Mr. Chairman, members of the Commission, my name is Ian Sinclair. Associated with







me is Mr. Wright, and we have the honour of appearing before you on behalf of Canadian Pacific.

You suggested, Mr. Chairman, that the railways might start, and my good friend Mr. McDonald, for Canadian National, suggested that I might speak first.

I take it that the reason you asked the railways to begin is that it is recognized by everybody that railways are essential to the proper carrying on of Canada's business, and that railways must be in a financially sound position to do that properly. I would not expect there would be any difference of opinion on that by anyone.

Now, Canadian Pacific welcomes the appointment of this Commission. As we believe, it presents an opportunity for some problems to be considered, and recommendations made that will result in an improvement in the transportation picture in Canada.

The Order in Council which sets out the terms of reference is in concise form and, as far as Canadian Pacific is concerned, it does not present too much problem as to what we think it means. I take it that you wish from us what we think about it in principle.

The first point that we would consider is that the problems are to be delineated and the causes thereof enunciated, and then look for solutions to those, and then the specifics.

I think it is of some significance, Mr.







Chairman, that the word under the first specific is "inequity", and our first point there would be that this does not mean "difference", but means "unfairness". In other words, it is recognized by the Order in Council that there are and will always be certain differences in the freight rate structure, and because of differences it does not necessarily mean that they are inequitable; in other words, that it is only when they are unfair, and proven to be unfair, that the Commission is concerned with them. That would be the comment I would make on (a).

The next phrase in there that might be spoken to is "national economic policy". What is meant by "national economic policy"? I would take it there would not be much dispute that national economic policy in Canada is the policy that maximizes the per capita income of all Canadians.

I do not think at this stage I have anything to say, except that I could not leave (a) without mentioning that it will be, as I am instructed to present to this Commission, that the greatest inequity in the freight rate structure -- and possibly the only one of significance -- is that which results from what is known as the statutory rates on grain and grain products in Western Canada as required in their application under Section 328, subsections 6 and 7, of the Railway Act. That provides the transition into subsection (b) of the Order in Council; that is, the







obligations and limitations imposed upon the railway. The obligations imposed upon the railway are to provide a certain service. Canadian Pacific will have something to say about those, in their application -- the regulation and matters of that kind; but, it will also have something to say about the statutory rates on grain and the burden that that imposes on the railways and on the shippers of other commodities. Canadian Pacific will lead certain proof in that regard, part of which will show that if the general increases in freight rates in the postwar period had been applied to grain, in the period 1948 to 1958, the revenues of Canadian Pacific would have been approximately \$235 million higher than they were. The evidence will also show that in 1958 the statutory grain rates accounted for about 27 per cent of the work performed on the Canadian Pacific, but only brought in approximately 9 per cent of the freight revenue. This burden will be demonstrated in our brief by generality and also by specific.

It would be the intention of my clients, Mr. Chairman and members of the Commission, to introduce certain studies that would show the measure of this burden, including the cost of moving the grain that is transported at statutory rates. We will also propose solutions to that problem -- specific solutions. As I am instructed -- and I think I should say right now so there will be no misunderstanding -- the solutions





we will propose will not result in changing the existing rates as they are paid by the farmers.

"The possibility of achieving more economical and efficient railway transportation": that is a pretty broad subject. It involves availability of capital; it involves control of competition; it involves the regulatory shackles, if I may use that word, under which the railways are operating under existing legislation. Canadian Pacific will be presenting certain evidence in that regard.

Subsection (d) has to do with what assets are to be considered or taken into account in fixing railway freight rates. That is an old subject, one on which a great deal has been said, and it is something which I think you must keep in mind, and we might make the point that right now, under the Railway Act, this matter is dealt with by legislation in Section 387 in regard to classification of account. It will be the position of the Canadian Pacific, and the evidence that we will lead will show, that Canada can support its railways fairly without any what might be termed 'digging into other businesses' that are run by railways. We will take the point as firmly and in such a detailed way as we can that it would be a disservice to Canada and to Canadian transportation if businesses which the Canadian Pacific corporation happens to be in that have nothing to do with transportation were taken into account in fixing freight rates.







In regard to (e), that, of course, is the broadest of all. Canadian Pacific will have certain specifics to advance in that matter, but, generally speaking, until we see what others are proposing, we will not be in a position to say what they will be. We will have certain specific amendments to the Railway Act to suggest.

THE CHAIRMAN: You mean everybody can take some comfort from this (e)?

MR. SINCLAIR: That is right; everybody is left with that to put in before the Commission, and suggest you should consider anything that they think of, and that is a very reassuring thing for counsel, because if he forgets anything under (a), (b), (c) or (d), he can turn to (e), and say that that is where it belongs.

In regard to procedure, it would be our suggestion to you that we would have in mind filing with the Commission a brief which would set out, more or less in points, the position of Canadian Pacific before the witnesses who are to appear for the company are to be called. In view of my friends who might by chance -- possibly not in this tribunal -- but who might have a different view, we would prepare precis of evidence, and we would be in a position, I think, to let anybody have those precis some time in advance of the calling of the witnesses.

THE CHAIRMAN: When would you expect to be in the position to go on with your case, which includes the delivery of the precis you talk about? How long







do you feel you would require?

MR. SINCLAIR: Well, sir, as I see the position of Canadian Pacific, the large part of its case for positive action has to do with the statutory grain rates. As I said, possibly the only inequity that we would think came under (a) would be that. There may be others, and we would want to answer them at some stage. To answer your question specifically, our brief of points could be available for filing with the Commission, let us say, a month to six weeks from now, if that is your direction. It would not be a detailed submission. Then, I would suggest, Mr. Chairman, that, say, a month before the witnesses were to appear, to be called by Canadian Pacific, that we would make available to the Commission, and to any people interested, a precis of the evidence of our witnesses -- a month before they were to be called. If they were to be called, say, in January of February, we could produce them a month before that. It would be the intention, sir, with your concurrence and under your direction, that Canadian Pacific would present what evidence it had to present at hearings in Ottawa. We would not take the position that we would be presenting evidence on any regional hearings.

THE CHAIRMAN: Yes.

MR. SINCLAIR: Unless there is something I have overlooked, I think that pretty well expresses the views that we have, in a general way.





THE CHAIRMAN: Thank you. Mr. Wright, do you have anything to add?

MR. WRIGHT: I have nothing to add at this stage, Mr. Chairman.

THE CHAIRMAN: Thank you. Mr. McDonald?

MR. McDONALD: Mr. Chairman, Mr. Commissioners, my name is A. D. McDonald; associated with me is Mr. J. W. G. Macdougall, appearing on behalf of Canadian National Railways.

In the first place, I would like to say that we are very pleased to be asked to make representations to your Commission, and we wish to be as helpful as we can. We intend to file a brief setting out the different points in which we are interested and giving the Commission some background information to assist. Officers of the company will be available at the hearings to give evidence, to answer any questions that the Commission counsel may think are relevant, and do everything we can to assist you.

We are all interested, I think -- everybody here -- in the welfare of Canada first. Canadian National, the government-owned railway, has a duty to provide efficient railway service as economically as possible. Now, I do not wish to cover all the ground my friend Mr. Sinclair has so ably covered. I agree with what he has to say under item (a) -- the inequities in the freight rate structure. It is pretty hard for the railways to deal with that until we hear what the other people say the







inequities are, because other than the statutory grain rates we have not been able to determine any inequity in the freight rate structure from our point of view. In regard to those rates, Canadian National considers the fixing of those rates a matter of national policy. We do not make any recommendation for any change in those grain rates, but we are conducting and are still conducting a study on the cost of handling this grain, and we wish to show the impact of those rates on the revenues of the company. In other words, Canadian National is in a deficit position in 1958. Many people ask "Why is that caused?" Well, here is one item: we are carrying grain at a cost that exceeds the revenue we receive, and I think that evidence is material for the consideration of this Commission. What action you may take is another matter, but we are not recommending that the freight rates be changed.

In regard to "obligations and limitations", there is considerable detail in that, and we will in our brief point out what we think they are, and any recommendations we have to remove them.

As far as the possibilities of achieving more economic and efficient railway transportation are concerned, the way we are attacking that item is that we will outline to your Commission what has been done by the Canadian National Railways in the last ten years, since the Turgeon Commission, to provide more efficient and economic transportation, such as the







diesel programme, and what it has accomplished, and other technological advances which have been made that will be outlined, and we will outline to you what we are trying to do in the future.

On the question of (d), "what assets and earnings of railway companies in businesses and investments other than railways should be taken into account in establishing freight rates", our position is the same as that of the C.P.R., because we are affected because the C.P.R. has been taken as the railway whose rates are fixed-- a privately-owned company -- and if in fixing those rates the Board were to take into consideration other income, it would throw our position out of balance, because we do not have the other income that Canadian Pacific has. Our position on sound economics is that no other income, other than that from railways, should be taken into consideration in fixing rates.

Then, among the other matters, we are considering the question of whether this Commission wishes to hear anything on labour relations. If the Commission desire a submission on that subject we will be very glad to make it.

We could let the Commission have a brief in approximately one month. I don't want to limit it to exactly one month, but five weeks, or something like that. We have a lot of material, and it is a question of getting it together and in order.





Our whole procedure will be to give the Commission as much relevant information as possible, and to make whatever recommendations we think will be of assistance to you.

I don't think there is anything further I can add at this time.

THE CHAIRMAN: Thank you very much, Mr. McDonald. Mr. Macdougall, have you anything to say?

MR. MACDOUGALL: No, Mr. Chairman and members of the Commission, I have nothing further to add to what Mr. McDonald has said.

THE CHAIRMAN: Now, we will not attempt to designate just who is to speak first on this subject, from the provinces. So, we will leave that to agreement of counsel, but we would appreciate it if you would state your name and the province you are representing.

MR. SMITH: Mr. Chairman and members of the Commission, I am afraid I am elected by my confreres to open this discussion concerning the railways, though some things I may say may not be too pleasing to them. My name is F. D. Smith, and I represent, through the Maritimes Transportation Commission, the four Atlantic provinces of Newfoundland, Nova Scotia, New Brunswick and Prince Edward Island.

With respect to the terms of the Commission, I agree with my friend Mr. Sinclair that the terms seem to be very comprehensive, and I have no quarrel







with the suggestion that the powers conferred upon this Commission are all-embracing. In the recital it is stated that it is in the national interest that a comprehensive and careful inquiry be made with all reasonable dispatch into problems relating to railway transportation in Canada and the possibility of removing or alleviating inequities in the freight rates structure. Your Commission is appointed to inquire into and report upon the problems relating to railway transportation in Canada and the causes thereof, and to recommend solutions. That is the general Commission conferred upon you, sir, and in particular, then, various matters are set out in subparagraphs (a) to (e).

In so far as the governments of the provinces which I represent are concerned, subparagraph (a) is, I suggest, a very important provision. We in the Atlantic provinces have heretofore, and still do, complained of inequities in the system -- in the structure, and their incidence upon the regions represented by the four governments. It will be our intention to submit to this Commission evidence and representations dealing particularly with the problems as they relate to those provinces and to suggest steps which can be taken to remove or alleviate these inequities.

As to subparagraph (b), that also is a most important provision. If it means what it appears to







mean, among other things it is evident that the Crow's Nest Pass rates, to which reference has been made by my friend Mr. Sinclair, are to be inquired into, and, if that is the case, it seems to be that they form a very important segment of the investigation, and because perhaps of the relative unfamiliarity with the rates by people -- shippers, manufacturers and consumers -- in eastern Canada, it would, I suggest, be helpful if the facts relative thereto were put on the record before this Commission hears submissions from the Atlantic provinces or, indeed, from central Canada. This subparagraph, I admit, would seem to include any statutory rates including the rates which operate under the Maritime Freight Rates Act; but, I suggest that under the Maritime Freight Rates Act there are no obligations and limitations imposed upon the railways by law, apart from any bookkeeping; but, no limitations and obligations revenue-wise.

Now, subparagraph (c), the possibility of achieving more economical and efficient railway transportation, is also a very important and difficult topic. The railways, actually, have more information on it than those who are not connected with the railways, and we have found it difficult in the years past, before other commissions -- indeed, before the Transport Board -- to adduce evidence in this regard. I think, therefore, it is essential that if the railways could be heard first on this topic it would be





to the advantage of the Commission.

Subparagraph (d), whether, and to what extent, the Railway Act should specify what assets and earnings of railway companies in businesses and investments other than railways should be taken into account in establishing freight rates, is also a topic which has been considered both by the Turgeon Commission and has, as my friend Mr. Sinclair mentioned, been provided for to a certain extent in the Railway Act. There have been, I suggest, great changes taking place in the transportation field in the last few years, and this, I suggest, makes this topic one of the utmost importance.

As to the general provision contained in subparagraph (e), I, like Mr. Sinclair, feel that this will have to be developed as the sittings of the Commission go on and the evidence is adduced and representations made, and at this time I do not propose to mention any specific topics, but will, when the occasion arises, endeavour to the best of our ability to submit evidence and also argument on that topic.

I do not know at this time, Mr. Chairman, if you would wish to discuss anything as to the time or the method as to how you propose to conduct your hearings; that is to say, for regional hearings, or when these hearings are to commence.

THE CHAIRMAN: We would appreciate it.  
The railway counsel have indicated about when they







would be ready, and may I ask, Mr. Smith, at this time is it your thought that the railway case being put in in Ottawa, as suggested, that then your case or submissions, you would like to have about one month after -- is that correct?

MR. SMITH: I would prefer that the case for the railways be put in first, and also, as I have already mentioned, I would suggest that if this matter of the Crow's Nest Pass rates is going to be inquired into that that hearing be held before the submissions are made from the provinces which I represent. We have heard for years about the effect of the Crow's Nest Pass rates. Studies were presented to the former Commission, and then the matter was not dealt with by way of any intensive hearing or any kind of study into the question of cost. If at this time, and by this Commission, that matter is to be inquired into, it is a most important element in the whole question of freight rates in Canada, and the submissions to be made by the provinces which I represent will, to a certain extent -- and it may be a very substantial extent -- depend upon the evidence which is adduced in that regard both by the railways and by the provinces and any interests which represent the grain trade.

THE CHAIRMAN: Mr. Smith, you are speaking for the four eastern provinces here: do you propose that they will present a case in common, or will each







one be separate?

MR. SMITH: I wish to speak on that point, Mr. Chairman. My position is rather unusual in this regard. I have been acting for many years for this Commission on behalf of the four provinces and in the Turgeon Commission, though individual submissions were also made by the respective provinces. As I understand it, the Maritimes Transportation Commission propose to adduce evidence and make a submission at the meetings which will be held in Ottawa, and, as at present devised, it is contemplated that the individual provinces will make representations and adduce evidence, as well as persons, industries, shippers, and consumers affected in each province at the regional hearings which will be held. Now, at that hearing I will only represent the Province of Nova Scotia, and I think there will be individual representation at the regional hearings for the respective provinces.

THE CHAIRMAN: Thank you; I think that is very clear, Mr. Smith.

MR. BRAZIER: Mr. Chairman, my name is C. W. Brazier, and I represent the Government of the Province of British Columbia. Might I say, Mr. Chairman and gentlemen, it is the intention of the Province of British Columbia to approach the problems which will be placed before this Commission in a most cooperative spirit, both with the railways and with the other provinces of Canada. It has long been our contention that





the problems, the solutions to which will be studied by this Commission, are such that they can only be solved with the joint efforts of the railway management and the shippers and their representatives in Canada.

It is our contention that the terms of reference are extremely wide, and if any argument is made to you, Mr. Chairman, that they are not broad enough to include an investigation of the Crow's Nest Pass rates, then I say that the good that will come out of this Commission is being very much decreased immediately. I agree with Mr. Sinclair, Mr. McDonald and Mr. Smith that the terms of reference are such that they will permit the fullest possible investigation of the problems arising out of the imposition of the statutory grain rates upon the freight rate structure of Canada. The Province of British Columbia has pressed this matter both before the Board and before the federal Cabinet for some time now -- over a period of a number of years. I can say this, that at the present time we have no intention of suggesting that the farmers on the prairies should pay higher rates, but we will suggest that if these rates are to be maintained for purposes of the national economy, then the burden of those rates should be placed upon the national treasury rather than on the other users of the railway, and we will support anybody else making such a submission. However, I do state categorically that we do not intend







to suggest that the rates in themselves should be increased. I do not agree with Mr. Sinclair that the Crow's Nest Pass rates are the only inequity in the freight rates structure. There are many more. I am certain that he made that statement with his tongue in his cheek, and I would hope that the other low export rates on other commodities and on grain, other than the Crow's Nest Pass export rates, might also be looked into by this Commission.

One other matter which to the Province of British Columbia is of great importance, and one which we will suggest that this Commission should look into, is the impact of the possible passenger losses on the freight rate structure of Canada. Those particular subjects are one which, to my mind, the provinces and the railways must look into together. We can bring certain limited evidence before the Commission, but to get the real answers they must be supplied by our friends on the railway side.

I do not intend to go, Mr. Chairman, through the various sections of the Order in Council. I agree with counsel who have preceded me as to the interpretation of those sections, and would hope that there is no serious disagreement amongst the other counsel for the provinces.

It is the intention of the Province of British Columbia to present what may be considered by some as a rather revolutionary idea in the fixing or determining







of freight rates. I have reference, Mr. Chairman, to what is commonly known as the cost of service principle. The principle upon which freight rates, generally speaking, has been established in the past has been known and termed as a value of service for what the traffic will bear, and this is not a new subject; the cost of service is not entirely new, but it has developed and studies on it have taken place very extensively since the Province of British Columbia made a similar but a much briefer presentation on the subject to the Turgeon Commission somewhat over ten years ago.

It is a subject, Mr. Chairman, where we must look to experience in other countries; maybe, to some extent, to the United States and authorities down there who have some knowledge of it, and probably more particularly to some of the British experts, and I would hope that the Commission itself would see fit, in consultation with the railways and the provinces, to see whether or not they could not bring as expert witnesses from other countries one or two people who can speak with some authority on this and other matters. I think there is precedent that other Royal Commissions may have even travelled to the continent. I remember one in particular: my learned friend Mr. Sinclair went to England and France not too long ago. I understand, too, that even in Paris he had to work the full twenty-four hours a day. I make the submission, Mr. Chairman, that the Commission





might of itself, as the hearing develops, take into consideration the possibility of calling such experts. We don't want them to be partisan witnesses for us. We want them to come here and take a broad look at the problems of transportation in this country and to advise not in the interests of British Columbia only, but in the interests of the provinces and of the railways themselves. So, I do at this point make that suggestion to the Commission very seriously, and I trust I will have an opportunity of discussing it further at later hearings.

THE CHAIRMAN: I suppose your idea does really take shape, but the Treasury Board will be a party to it.

MR. BRAZIER: Yes, I am sure, Mr. Chairman, we will have to discuss problems such as that.

I might just say a word about the hearings. Most Royal Commissions that I have been connected with have started in Western Canada, and I have made the suggestion to some of my colleagues that this time the Royal Commission could probably more advantageously start in the east and work west.

THE CHAIRMAN: I will tell you, Mr. Brazier, that may reach me eventually.

MR. BRAZIER: In any event, I would think it would take us a month to six weeks, the same as the railways, to be prepared for a presentation, although I am not sure that our full presentation would







be prepared at that time. Otherwise, we will cooperate as greatly as possible with the Commission in the hearings it proposes to have. It is my suggestion that so far as the regional hearings are concerned, one hearing in British Columbia at the City of Vancouver would probably be sufficient to permit all the local interests to present whatever facts and figures they wish to present to the Commission. The Government would at that time present their views on particular B. C. problems of transportation, but we would hope to have the opportunity of presenting what will be our main brief on the principles of pricing transportation at a hearing in Ottawa. We would also hope that we can have our brief on that subject printed well before the hearing, and immediately it is ready we will distribute it to the railways and to other counsel involved in this case.

I don't think there is anything further I can usefully add at this moment, Mr. Chairman, unless you have any questions you wish to direct to me.

THE CHAIRMAN: Have you been able to persuade Mr. Smith to agree to this expedition eastward first?

MR. BRAZIER: I think there is some difficulty there -- some reluctance on his part.

MR. SMITH: I represent four provinces, Mr. Chairman, and there is some difficulty. In one







there has just been an election.

THE CHAIRMAN: Are there any more submissions from counsel for the provinces?

MR. FRAWLEY: Mr. Chairman, Manitoba entered Confederation long before Alberta, and I thought my friend from Manitoba was going to speak first, because we were following that order. However, he suggested I speak now.

I am J. J. Frawley, and I represent the Province of Alberta. My friends who have preceded me have dealt very lightly with what they call the statutory grain rates. My friend Mr. Sinclair finds himself in agreement with my friend Mr. Smith from Halifax and my friend Mr. Brazier from Vancouver -- perhaps for the first time. In any event, they are in agreement that the Crow's Nest Pass rates must be examined by this Commission.

Now, sir, I must ask you to permit me, if you will, to divide my remarks into two parts. I first wish to address myself to whether or not the terms of reference encompass the Crow's Nest Pass rates, and I wish to do no more than that; and then, I would respectfully ask a ruling upon that point and, following that, I should like the privilege of then addressing myself to the terms of reference and the position which my province takes, and give you the benefit, for what they are worth, of what my views with respect to the various sections in the





Order in Council are, just as my friends who preceded me have done.

THE CHAIRMAN: Mr. Frawley, I want to understand that. I feel I am getting into trouble, and I am just wondering: you want to make your submissions in regard to the inclusion, I suppose, of the statutory rates in the reference, and then you want a ruling; and then, after that you want to make another submission?

MR. FRAWLEY: Yes.

THE CHAIRMAN: On what?

MR. FRAWLEY: With respect to the meaning and the nature of the scope of the inquiry as I then see it, sir.

THE CHAIRMAN: Which one would you be more lengthy on?

MR. FRAWLEY: The second one, sir, if I have to make a second one.

THE CHAIRMAN: I was afraid of that.

MR. FRAWLEY: I will state my position with regard to the Crow's Nest Pass rates very quickly. My first submission is that the matter of the movement of grain in Western Canada to export positions is a matter which has been solely the business of Parliament up to this time, and my submission is that it is only Parliament that can determine, in the way in which Parliament speaks, that the Crow's Nest Pass rates are to be examined or dealt with in







any way -- increased or decreased. It is solely the business of Parliament. I say it is not to be assumed that the Governor in Council, being responsible to Parliament, would have directed this Commission to inquire into a matter which for so many years has been the exclusive ---

THE CHAIRMAN: Well, Parliament did pass the Public Inquiries Act.

MR. FRAWLEY: Yes, that is so, and I say that the Public Inquiries Act is not to be assumed, though, to have appointed this Commission to make a ruling with respect to a rate which cannot be dealt with except in Parliament.

My next submission with regard to that is that there have been observations by the Prime Minister when the Bill was going before the House. I do not have Hansard at my hand, but I know on the first occasion when this Order in Council was introduced, the Prime Minister stated ---

THE CHAIRMAN: We are bound by the terms of reference, are we not? That is just as irrelevant as a statement of anybody else, I would think.

MR. FRAWLEY: I would think, sir, that the Commission in coming to a conclusion upon this point, would wish to have regard to the views of the Governor in Council speaking through the Prime Minister. That is my only purpose in putting it to you; not that you are bound by it, but that you





would wish to have regard to what was said.

THE CHAIRMAN: Well, we have that in writing now.

MR. FRAWLEY: Oh, yes; but I say you would wish to have regard to what was said by the Prime Minister in Parliament, and that you should have regard to that along with the terms of this Commission. Again, sir, if the Prime Minister -- and I must refer to what he said -- he said something to the effect that there would in no event be any change in the level of the rates as a result of the findings of the Commission.

MR. SINCLAIR: I don't know, Mr. Chairman: I don't wish to stop Mr. Frawley, but if we are going to have to consider Hansard and things like that, I think that we are getting into quite a field. I rather thought that you, Mr. Chairman, indicated that the Order in Council was here and spoke for itself, and there are certain rules for looking at an interpretation, and I think my friend, possibly inadvertently, has transgressed just a trifle. I was going to suggest that before he transgressed any further that I thought possibly you had, in effect, ruled on that, and that you didn't want to look at Hansard and matters of that kind. I may have misunderstood you.

THE CHAIRMAN: Well, Mr. Frawley, if it is your contention and your argument that the







statutory grain rates, or the Crow's Nest Pass rates, are not encompassed within the terms of reference or by the Order in Council, we, of course, will be glad to hear you on it, but we have a document here, and that is our reference. Now, what anybody has to say with respect to that is irrelevant, as far as we are concerned.

MR. FRAWLEY: Yes, sir.

THE CHAIRMAN: If you want to present your argument, that is all right.

MR. FRAWLEY: In view of what you say, sir, if the Commission does not feel it should have any regard to what was said in Parliament, then the further observations or submission I was going to make with respect to that has no point. I think, further, sir, that in view of what you have said, while you have not made a formal ruling, that I will now proceed to present to you the views of Alberta with respect to the general scope of the inquiry, rather than make two bites at it.

You will have before you my submission that the terms of reference do not encompass the matter of the investigation of the statutory rates, but I think that I should perhaps proceed to make some general remarks with respect to the balance of the scope of the inquiry.

Certainly, the Commission is to investigate inequities in the freight rates structure, and





I am not certain that I heard my friend Mr. Sinclair when he spoke about the Crow's Nest rates, and I may have been doing him an injustice, but I rather thought he said that the Crow's Nest rates was the only unfair thing or the only inequity in the freight rates structure. He may have said that. If my friend Mr. Sinclair did, well, of course, I challenge him as thoroughly as I can. I would remind the Commission that this Commission was issued as a direct result of the appeal to the Cabinet last November against the award by the Board of a 17 per cent general increase in freight rates. Before the Cabinet it was disclosed that the Canadian freight rates structure had now got itself into such a position that 73 per cent of the increase which the Board awarded was being extracted from 32 per cent of the revenue in the case of the Canadian Pacific Railway Company. That discloses a distortion in the freight rates structure which, in my respectful submission, the Governor in Council said we should try to find a remedy for. So, in my view, the Commission is directed with that appeal very firmly in its mind and the state of affairs which that appeal disclosed, and to try to find solutions for the situation whereby three-quarters of a freight rate increase must be taken from traffic which represents only 32 per cent of the revenue. It is not the place to expand upon that







at all, except to put to you, sir, my view that there must be a thorough investigation of the reasons behind -- and all the reasons behind -- certainly, the Crow's Nest rates contributed to that distortion; that was perfectly obvious from the exhibits placed before the Board; but, other segments of the freight rates structure contributed almost as importantly to that distortion as did the Crow's Nest Pass grain rates. So, I merely say that, quite contrary to the views of my friend Mr. Sinclair, much more must be looked into than just the statutory grain rates, if they are to be looked into at all.

Then, I put it to the Commission that there must be, in my submission, a complete re-appraisal of the pricing mechanism of Canadian transportation as we know it. There must be a complete re-appraisal. We must find out if the value of service principle, which for seventy-five years has been good enough, must now be dispensed with or modified or continued, in the light of the situation in which the railways find themselves today. It will be my submission, and it is too early to be more specific, but I hope to make a submission to the Board that there must be another method of pricing transportation in Canada than what I call the perfectly outmoded value of service principle. I do not like to disagree with my friend Mr. Brazier,





but I can state very plainly to the Commission that I will endeavour to present witnesses before the Commission without waiting for the happy day when the railways and everyone else will present some comment on it. I think I should not wait for them, and, while waiting for it, I will endeavour to put some witnesses before the Commission. I think they will not be called partisan, but I will endeavour to put witnesses before the Commission, and will give the Commission some views of another method of pricing transportation in Canada, in view of the distortion which has crept in and which now requires that 32 per cent of the revenue furnish 75 per cent of the increase.

THE CHAIRMAN: If they puzzle us sufficiently, perhaps we can go back to Mr. Brazier.

MR. FRAWLEY: Yes. I would like to say that under Clause (c), the possibilities of achieving more economical and efficient railway transportation, immediately there comes to one's mind a statute called the Canadian Pacific-Canadian National Act, which was written for the very purpose of encouraging the railways to find ways and means of effecting economies. I must not say that nothing is being done, because I might be corrected. I may be told a great deal is being done by the railways, but I suggest not too much is being done under that statute. I recall the







last time a bill was presented on what had been accomplished and what was still being worked on, there were a great many projects still being worked on, and it would be interesting to know on how many of those projects a solution has been found. So, I suggest if there are ways of achieving more economic and efficient transportation, perhaps the Canadian Pacific-Canadian National Act should be looked at.

With regard to paragraph (d), that is a clause which suggests, and more than suggests that these non-railway assets and the non-railway income must be looked at, and that the Commission can report to what extent they should be taken into account in establishing freight rates. My friend says that is an old story. Yes, that is an old story, but the Governor General in Council, I am afraid, has made it a new story, and there is no alternative but to examine into the extent to which the non-rail assets and non-rail income of the railway companies should be looked into. My friend Mr. McDonald for the Canadian National says, "That would affect us rather badly because we have not got the other income which Canadian Pacific has." Once again, I say the words are there, and there must be an examination of what has been known down through the years as the non-rail income or other income of the railways.

That is nothing more than a very, very





sketchy outline of the position which I take, which I trust will be made more clearly as the weeks go by.

I would like to suggest with regard to the matter of hearings that it will be difficult to have useful hearings anywhere until the railways have been heard from; I think, particularly on the matter of the export grain rates. If the Commission will rule that it proposes to go into the Crow's Nest Pass rates, then I would think that some people in my province -- some of the Chambers of Commerce and some of the farm organizations that are probably not disposed to send their officers or counsel to Ottawa -- would wish to say something about that. They certainly would want to withhold until they heard the position of the railways, and that seems to me to be a practical reason why before you go abroad seeking the views of the people like the Chambers of Commerce and others than the province -- because may I say that my province would be willing to make its main submission in the City of Ottawa, as has been the usual practice in the past. However, in saying that I must not brush aside people like the Chambers of Commerce and farm organizations and others who would choose to say what they have to say when the Commission goes abroad. I put it to you as a practical matter that we had better hear from the railways what they have to say not only







with respect to the Crow's Nest freight rates, but with respect to other rates in which Alberta is vitally interested -- other aspects of the transportation problem. I suggest you should not go into western Canada or eastern Canada -- and Mr. Smith has already made the same point -- until we have heard from the railways. What that will do to your proposed schedule may be difficult to say. Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you, Mr. Frawley.

MR. MAURO: Mr. Chairman, Mr. Commissioners, I do not want to break down the procedure that has been followed, apparently for generations, concerning the order in which we speak. My learned friend Mr. Frawley referred to the fact that he had expected me to rise earlier because Manitoba had entered Confederation prior to Alberta, and I certainly want to underscore the fact that we in Manitoba appreciate this fact, and the only reason I allowed him to get up is because he is the only person who has been associated with transportation in Canada since Confederation.

THE CHAIRMAN: You can always learn something from Alberta.

MR. MAURO: The matter of the terms of reference, Mr. Chairman, I want to support the submission of Mr. Frawley, that it is the view of the Government of the Province of Manitoba that it was





not the intention nor is it a part of the interpretation of the terms of reference that they should have included an investigation of the statutory rates on grain, and I wish to record my objection and my feeling on this particular phase of it, that the Province of Manitoba feels this Commission does not have authority under the terms of reference to investigate those rates. I would like to refer also, Mr. Chairman, to the actual specific terms of reference contained in the Order in Council.

Under (a), I think it is fairly clear that inequities are presumed. There is no suggestion that the Commission should find out if there are inequities. The terms of reference say that the Commission shall consider and report upon inequities in the freight rates structure, their incidence upon the various regions of Canada and the legislative and other changes that can be made in furtherance of national economic policy, to remove or alleviate such inequities. We are not going to play around with mental gymnastics as to "differences" or "inequities", because it is going to be the hope of the Province of Manitoba to place before this Commission differences in rate structure in the Dominion of Canada which are, in fact, gross inequities in view of national economic policy. I submit that the governing words of the whole Order in Council are those words "in furtherance of national economic







policy", because the railways and transportation system in this country was enunciated and based and interwoven into the economic fibre of the Dominion of Canada. It is almost trite now to say there would have been no Canada without the railways, but it is nonetheless as valid a statement today as it was in 1867 and subsequently. We are going to have a great deal to say about national economic policy and the roles played by the Canadian National and Canadian Pacific railways in the furtherance of that economic policy. We say that you cannot consider the problems of the Maritime regions or the problems of the Prairie region or the problems of British Columbia, or any region of this country -- the economic problems -- without talking about the railways -- the function of the railways in those areas -- and the action taken by the Canadian Government since 1867 touching upon transportation to further that policy. We are not going to permit the Canadian National or Canadian Pacific to segregate any one aspect of the rate structure or any one aspect of the transportation policy and say that this represents a problem that should be corrected. We are going to say it cannot be discussed in a vacuum. We must take a very frank and full look at what has been Canadian economic policy in regard to transportation, and we must continue to look at it as a whole picture. We are going to make some references to the Maritime





Freight Rates Act. Contrary to what my learned friend Mr. Smith says, we submit that under Section 336, one of the exemptions is the rates applicable to the moving of freight traffic upon or over any or all of the lines of the railway correctly designated as the Eastern Lines in the Maritime Freight Rates Act. We are not suggesting changes. It will be our humble hope that in presenting this evidence we will ultimately present a picture of national economic policy and the role of transportation in the furtherance of that policy.

We say that the inequities mentioned in (a) do exist, and it will be our purpose to try and show what a retrograde effect they are having on the development of this policy, and particularly in the Province of Manitoba.

I might sincerely submit, Mr. Chairman, that the Province of Manitoba has approached this Commission with a view of cooperation both with my learned friends on the railway and in an attempt to assist this Commission to the fullest extent of our capability.

We will, as I say, certainly discuss horizontal rate increases and their impact on the economy of Manitoba under (a).

We will want to investigate various other rates in the Dominion of Canada. My learned friend Mr. Sinclair suggested that a cost study had been made







on the Crow's Nest Pass rates. I now want to give notice to my learned friend that in so far as the Province of Manitoba is concerned, we are going to strongly submit to this Commission that the Commission should not look at the Crow's Nest rate as an inequitable rate without looking at many other rates, because if we are going to start costing these rates we want to take a look at the general transportation picture as it affects the C.P.R. and find out where those burdens are.

Under (c), the possibilities of achieving more economical and efficient railway transportation: we may have something to say in the way of constructive suggestions. We would expect to hear from the railways in their submission as to what is being done and what is proposed for the future from the view of creating more efficient transportation in Canada.

As to (d), this is going to be, I am sure, an interesting phase of the Commission as to what other assets, because it is difficult, Mr. Chairman and Commissioners, to segregate the Canadian Pacific railway into a transportation phase and a non-transportation phase in regard to the Dominion of Canada, when the Canadian Pacific would have no existence. The very *raison d'être* of the Canadian Pacific Railway was as a transportation medium, and it received as a result of this very large grants of





land and concessions and other assets which are now rather profitable to that organization. If this is going to be considered, we may have to open the door and take a good solid look at the Canadian Pacific Railway: what was the purpose and concept behind the Canadian Pacific Railway in the furtherance of national economic policy? You might, therefore, have to conclude, after hearing this evidence, whether or not certain things were given to the Canadian Pacific Railway in the furtherance of national economic policy which are now to be brought in as other assets in determining this reference.

That will be the general tenor of our submission on the part of the Province of Manitoba. We will be presenting evidence, Mr. Chairman, in Winnipeg of a regional nature. We hope, in assistance to the Commission, to present an historical summary of this national economic policy down through the years in relation to the Canadian Pacific Railway, and we will have representations in Winnipeg from interested groups in the Province of Manitoba.

THE CHAIRMAN: You will be presenting, when the railways are finished, a submission here in Ottawa?

MR. MAURO: Oh, yes; it is our intention to present our expert evidence and witnesses on this matter in Ottawa, but we had expected there would be regional hearings in Winnipeg, and we also ask







if the Commission would consider having a hearing in the City of Brandon, Manitoba. We have had requests to the Manitoba Government to place this request before this Commission, and we felt that perhaps one day in Brandon, Mr. Chairman, might be satisfactory for those hearings.

While I am on my feet, Mr. Chairman, I have also been requested by the cities of Port Arthur and Fort William, and the Northwestern Ontario Development Association to submit their request to this Commission, which I understand has been ---

THE CHAIRMAN: You are speaking on behalf of them?

MR. MAURO: I understand Mr. Doug Fisher, the member of parliament for Port Arthur and East Thunder Bay intends speaking.

THE CHAIRMAN: I just want it clear.

MR. MAURO: I am doing this because I was requested by the mayor and the manager of the Northwestern Ontario Development Association to speak, and I promised that I would. They feel they have particular problems in Northwestern Ontario which are somewhat unique to that area. They are a primary-producing area, coupled with an expanding industrial development, and they feel this is an area which reflects what are some of the intentions of national economic policy, and tied in with the





problems coming up now with the St. Lawrence Seaway and the development of the natural resources of Northwestern Ontario. They would appreciate it very much if this Commission could see fit to sit one day in the lakehead cities.

THE CHAIRMAN: Then, perhaps we should go to Duluth?

MR. MAURO: Well, I won't comment on that, Mr. Chairman.

I have nothing to say as to dates, Mr. Chairman. I have endorsed the submission that the railways should place their case before the Commission, and that the hearings follow.

MR. BRITNELL: Mr. Chairman and members of the Commission, my name is G. E. Britnell. I speak for the Province of Saskatchewan. I do not wish to masquerade as legal counsel: legal counsel for the Province of Saskatchewan is Dean F. C. Cronkite who expected to be here this morning. He is in Ottawa, but unfortunately he is ill, and I would, therefore, respectfully request that the statement of the Province of Saskatchewan be deferred until after the noon recess.

I might explain -- and I am embarrassed to have to do so -- that I arrived only in the city this morning and I have had no opportunity to consult with Dean Cronkite or with any of my colleagues from the Province of Saskatchewan, but we will be







prepared to go ahead, either through Dean Cronkite or some other representative, immediately after the noon recess.

THE CHAIRMAN: Or as soon as possible after that, depending on whether somebody is part way through.

MR. MAURO: There is only one date operative, as far as the western delegates are concerned, Mr. Chairman: we want to be somewhere near Toronto for Grey Cup Day.

THE CHAIRMAN: I wonder that you didn't say Hamilton.

MR. MacKIMMIE: May it please the Commission, Mr. Chairman and gentlemen, my name is R. A. MacKimmie, from Calgary, and I represent here, sir, the three wheat pools at this particular meeting only: the Alberta Wheat Pool, the Saskatchewan Wheat Pool, the Manitoba Wheat Pool and the United Grain Growers Limited.

Those four organizations, Mr. Chairman, represent, I suppose, some 200,000 western Canadian grain growers. My clients are primarily, if indeed not exclusively, interested in what this Commission intends to do in this inquiry with respect to statutory rates or what is known as the Crow's Nest rates. I do not wish to reopen an old wound. I was naive enough to have some impression in my mind as to whether or not the Crow's Nest rates were





properly a matter to be inquired into in this Commission. I understood, in your invitation and opening remarks this morning, counsel were asked to give their views of what the interpretation of the wording of the Order meant. I concede immediately, sir, that if one looks only, and is permitted only to look, to the wording set out in the Order, then, indeed, it must be broad enough to include any inquiry or any description of whatsoever kind as long as it relates to transportation.

THE CHAIRMAN: It is limited to an inquiry.

MR. MacKIMMIE: Yes, it is, but the (e) part, and along with the general wording used in the others, I think it is very broad. I was going to submit that the Commission might like to consider some of the strong remarks made in the House of Commons at the time it was passed, because if nothing is to be done, if this is a solemn contract and it is not to be changed, then I wonder what can be achieved by this Commission looking into the Crow's Nest rates in detail. I, for my own part, am not prepared to concede, as some people do, there has been a general tenor of discussions and speeches that these rates are non-compensatory and are not a good thing. For that reason the railways come in this morning, and there seems to be a general consensus of opinion, "You are not going to disturb those rates." For my clients what that does is further the feeling







that has been going on in this country, or part of it, for some time that the western farmers are the whipping boy for all the difficulties in our freight problems. If we are called upon, and this Commission hears the statutory grain rate problem, we are not going to be satisfied with someone telling us we are not going to disrupt them, because we think there can be some demonstration made, at least, that they are not as bad as people may feel. If this Commission does go into the question of the Crow's Nest rates, my clients would like to have the opportunity and the time to exhaustively study and to retain, if we can, experts to assist us on this particular matter. As you probably know, Mr. Chairman, in the Turgeon Commission the Canadian Pacific for one year only tried to demonstrate what the effect of these rates were, and they could not come up with an answer. They had "somewhere between 13 million and 16 million", and Mr. Justice Turgeon said he could not accept that. If we get into these rates, it certainly will involve studies of cost allocation between different types of track and different types of service that is being given, and, therefore, since most of this information is in the hands of the railways, I would appreciate very much the guidance of this Commission that we have the railways submit, if they can, within six weeks, their submissions on





the Crow's Nest Pass rates.

Then, I would go further, sir, and ask that accredited representatives of the grain trade -- these pools for whom I act -- be permitted to have reasonable access to railway information and their offices in Montreal, to assist us to evaluate what these submissions are, and make studies of our own. We are not under any illusion this can be done in a short period of time. The Canadian Pacific and Canadian National, with their officers and knowledge -- the whole background -- might be able to prepare a submission within a matter of six weeks, but in so far as my clients are concerned, it would be quite impossible to undertake and be able to present this Commission with our views at any date earlier than the spring of 1960.

I would certainly agree with all other counsel that in connection with the railway submission, the earlier it is in the better; and then, if we had an opportunity to present our own, that it should be done in Ottawa, because there are a number of people involved.

There is one other comment I have: as I say, I am interested only in that particular matter, but if we do get into it, then, referring to paragraph (d) I feel very strongly that if the railway companies in constructing the railways -- if the Canadian Pacific, in constructing railways across







Canada, obtained other benefits by their land concessions, that they certainly got them by virtue of having put the railway across it, and it is quite proper, and it seems to be that that should be looked into -- certainly, getting into the Crow's Nest rates in particular, if the railway companies obtained other benefits which have paid off very handsomely, as well as some of the onerous burdens they assumed, then, in my submission, they should be looked into now.

It may easily be in your visits to Western Canada, the pools, on the general picture of transportation, may wish to make general submissions, and they could be ready to fit in with the Commission's convenience, but to segregate the Crow's Nest rates, themselves, I feel if we are given cooperation in that field we will do out best to get it as quickly as possible.

THE CHAIRMAN: I think while you are here you might speak to counsel for the railways in connection with our proposal, and possibly you can come to some formula; perhaps you can't.

MR. MacKIMMIE: I certainly will accept your guidance on that, Mr. Chairman. The same matter was raised in the Turgeon Commission, and Mr. Justice Turgeon thought it was a reasonable request and didn't see how the shippers could do it unless they had that information.





THE CHAIRMAN: I am aware of that.

MR. MacKIMMIE: Thank you very much.

THE CHAIRMAN: Mr. Hume?

MR. HUME: Mr. Chairman and Mr. Commissioners, my name is F. C. Hume, and I have the honour to represent this morning the Canadian Trucking Associations, which I think probably the Commissioners are aware is the national federation of provincial associations representing the commercial for hire truckers in most parts of Canada. I should like to accept the dual role as their advocate and to personally say to you and to your Commissioners, our congratulations on the important work that you are going to undertake, which I am sure will have a very great benefit to Canada. I am personally aware of the knowledge, experience and interest of three of the Commissioners, and I am sure that the results of your studies will have a very far-reaching effect on the future national economic policy as it relates to transportation.

With respect to the Order in Council and the position of the client I represent, may I say that we conceive ourselves to be included in this inquiry in a rather limited way, but when the Order in Council refers to the problems relating to railway transportation we find ourselves as one of those problems right at the beginning. Perhaps I might just refresh you and your Commissioners' memories,







sir, that in the 1949 Commission the Canadian Trucking Association, operating then under a different name, did not consider itself concerned in any way with the Turgeon Commission, and found that the regional hearings had not progressed more than a few weeks before the trucking industry was very much before the Commission, and finally were forced to take part in the hearings which commenced in Ottawa.

THE CHAIRMAN: I would imagine you are in this one all right.

MR. HUME: The Canadian Trucking Associations believes we are in this one and we only seek to be of assistance.

We have one or two things we should like to say in due course, but the scope of the inquiry we regard as wide enough to include us, and we welcome the opportunity to be of assistance, but what we shall say will depend very largely on how we are involved by others, and we will have to wait and see. We are at your disposal, and our submission can be ready within six weeks after hearing what is submitted on behalf of the railways.

THE CHAIRMAN: Mr. Hume, I think your Association also has associations -- I don't know whether in each of the provinces, but would the representation which you make on behalf of the Canadian Trucking Associations include the





provincial ones, or will they be making representations regionally?

MR. HUME: I am instructed that the provincial associations are making no representations, as such, and that their representations will be made through the Canadian Trucking Associations -- the federal organization. However, Mr. Chairman, may I please reserve the right that, if on the regional hearings we are involved, that local personnel on the spot, speaking as witnesses for the Canadian Trucking Associations, may wish to make submissions in the regional hearings.

MR. HUTCHINSON: Mr. Chairman, my name is A. A. Hutchinson, and I represent organized labour on all railways in Canada. We will wish to present a brief to your Commission. We will not be concerned with item (a) or item (d). We will be concerned with item (b), item (c) and item (e). I can't tell you just when we will be prepared to present the brief. We are working on it at the present time, but it will take some little time to get it ready, and we will present it in Ottawa at the convenience of the Commission, when you sit in Ottawa. It will probably be New Years, or a little later, before we get around to it. I just wanted, Mr. Chairman, to make an appearance and say that we do wish to present a brief to the Commission. I thank you.







THE CHAIRMAN: Well, Mr. Hutchinson, you see how quickly the time appears to be flying this morning.

MR. HUTCHINSON: I am sorry, Mr. Chairman, we might be able to get around to it before the first of the year; we will do it as soon as we can.

MR. BLAIR: Mr. Chairman, members of the Commission: I represent the British Columbia Lumber Manufacturing Association. My name is D. G. Blair of Ottawa, and allied with the British Columbia Lumber Manufacturers, for the purpose of making a submission to this Commission, will be the Plywood Association of British Columbia and the Consolidated Red Cedar Shingles Association.

I do not intend, Mr. Chairman, to go through the terms of reference in chronological order. In the first place, the main submission of the Lumber Association will be that there is a vast inequity in the present freight rate structure, and it has been referred to also by Mr. Frawley -- the accumulative effect of the horizontal increases.

Secondly, we suggest very firmly that the Crow's Nest rates are properly a subject for inquiry by this Commission.

Thirdly -- and I think this is a point not mentioned by others -- we feel that a proper subject for study by this Commission is the effect





of restrictive labour practices on the railroads.

We feel any analysis of the economics of railway transportation of necessity must include a study of the effects of modernization on railway costs and the extent to which the capital costs of modernization are stultified by existing restrictive labour practices.

We also feel that this Commission must make a determined and factual investigation of the cost of operation among remunerative branch lines. In that connection, also, we join with Mr. Brazier in suggesting that the costs of operating non-remunerative passenger services must be carefully studied in order to determine how it is that railway costs are made up and the extent to which various shippers are subsidizing various elements in the economy.

Finally, there are certain operating rules and practices of a technical nature which the Lumber Associations will wish to bring before the Commission for study at the appropriate time.

There is one thing, Mr. Chairman -- a suggestion we would like to make with deference as to your procedure: I am not trying to presume the prerogatives of the Treasury Board, but I represent businessmen -- shippers -- one of the largest users of railway services in this country. They have not got at their disposal all the facilities of government organizations to make presentations of this kind.







It is also well known that there are not a large number of experts in transportation in Canada or, indeed, for that matter, in North America. For our part, we would welcome the suggestion made by Mr. Brazier that the Commission, itself, might seek to open up these various lines of inquiry which have been mentioned by myself and others so that they could be inquired into by experts in the field, in a non-contentious and in an objective manner; possibly these experts could be brought before the Commission for cross-examination. This is merely a suggestion which we make in the hope that the important inquiry of the Commission can be conducted in a manner which is satisfactory to everyone. Thank you.

THE SECRETARY: May I make an announcement, Mr. Chairman. The firm of Angus, Stonehouse & Company Limited, 372 Bay Street, Toronto, is responsible for transcripts. Anyone wishing transcripts of the proceedings of today and tomorrow and, of course, at all other hearings, should make arrangements with the reporter in the hearing room or at the aforementioned address.

THE CHAIRMAN: Now, gentlemen, we shall adjourn until half-past two.

---Whereupon the hearing adjourned at 1.00 p.m.  
until 2.30 p.m.





---On resuming at 2.40 p.m.

THE CHAIRMAN: I believe there were some more submissions on the Reference. Could I ask if there is anybody else who wants to speak to that subject now?

MR. BRITNELL: Mr. Chairman and members of the Commission: I regret to say Dean Cronkite is still incapacitated, and I was unable to go over the submission with him, even if I could have appreciated the legal argument he proposed to make on certain points.

However, there are, on behalf of the Province of Saskatchewan, a few points I would like to make. First of all, I was greatly heartened by your remarks, sir, that this Commission would be conducted as a cooperative effort, and we certainly agree with this approach to the finding of truth. I must say, however, that when my friend Mr. Sinclair got up I was a little bewildered. I don't attribute my entire bewilderment to my misadventures with the chosen instrument of national policy in the air last night. I think perhaps some of it is to be attributed to Mr. Sinclair and the position of the C.P.R. The railway approach to this is, of course, somewhat different from that of the Province of Saskatchewan. We find ourselves in a considerable measure of disagreement with the point of view put forward by Mr. Sinclair. I am sorry to have to say that.







I was thoroughly alarmed at the prospect, which has caught us completely unprepared and unaware, that this might be turned into a Royal Commission to investigate the Crow's Nest Pass rates on grain. Our opinion, of course, the fundamental position of the Province of Saskatchewan, is that the Crow's Nest Pass rates on grain are not in issue before this Royal Commission. We may have relied too largely and too completely on the rather close association of the Prime Minister's statement announcing the Commission with what we took to be the extremely reassuring paragraph with which he closed his first freight tariff announcement. However, the stake of the Province of Saskatchewan in the Crow's Nest rates is so much larger and so much more vital than that of any of the other provinces in the Dominion that our major concern must be to safeguard them at all costs. Consequently, we feel that the Crow's Nest Pass rates must be protected in their present form rather than by any form of compensating subsidy, and in view of the history of these rates, with which we are prepared to deal if we have to, coupled with the national policy which was referred to on every hand this morning, we feel that the costs of handling export grain rates become completely irrelevant to this inquiry. Our opinion is that there are a good many other issues which the Commission might





profitably concern itself with, and concerning which we are on record in previous hearings of other commissions and before the Board of Transport Commissioners, on such matters as were mentioned this morning -- other income -- in which connection we are on record as not being in complete agreement with Mr. Sinclair. There are matters such as passenger services and a whole host of other matters which seem to us to be highly relevant to this Commission, and out of which some of the problems of the railways may stem.

There are one or two other points I would like to mention. The first of these is that I had hoped, and I am encouraged by your remarks, Mr. Chairman, that it will be possible for the Commission to recruit the necessary staff to assist them in what I would define as finding truth -- of course, with the assistance of Mr. Sinclair and the provinces. However, I feel you are in a much better position to do that, certainly than an impecunious province such as Saskatchewan.

So far as the timing of your hearings is concerned, the Province of Saskatchewan is in full agreement with the other western provinces, and I don't think I need to say anything further about that.

In conclusion, I might say that Dean Cronkite has a legal argument that he would very







much like to put before you and would undertake to do so in writing, with copies to Mr. Sinclair and all other interested parties, by the end of this week, and that he would respectfully ask you to reserve your judgment as to the inclusion or non-inclusion of an inquiry into the Crow's Nest Pass rates on grain until he has been able to do so. Thank you, sir.

THE CHAIRMAN: Are there any more submissions?

MR. TRELAW: Mr. Chairman, my name is A. R. Trelaw, and I represent the Canadian Manufacturers Association. It is contemplated, as a national organization, that we will be presenting a brief to this Commission which I hope will be of some assistance.

At this time I am not prepared to state the exact topics on which we will attempt to address this Commission. It will undoubtedly, though, fall within the terms of these specific items (b), (c), (d) and (e) of the Order in Council. Subject to any direction you may make, Mr. Chairman, it would be our hope we would be allowed to make that presentation at a later date in Ottawa, after the railways and others have presented their views, so that we might have an opportunity to comment on anything they may present.

MR. WALLACE: Mr. Chairman, my name is





W. A. Wallace and I represent the Canadian Transport Tariff Bureau. We will be submitting a brief on our viewpoint on federal rate filing for transport tariffs, and how this may stop some of the chaos in rate making.

THE CHAIRMAN: Would you mind repeating that, Mr. Wallace?

MR. WALLACE: If we file, federally, tariffs, everybody will know what the rates are, and stop shippers playing one means of transportation against another; and that will be contained in our brief.

MR. GRIFFIN: Mr. Chairman, gentlemen of the Commission, my name is H. L. Griffin, and I am associated with United Grain Growers Limited, on whose behalf I am authorized to make a statement. Our company wishes to participate in the work of the Commission, and in due course to present a brief and to be represented by counsel. That is in addition to some work in respect of certain aspects of the inquiry which we have undertaken jointly with some other farm organizations. In that respect Mr. MacKimmie speaks for the group.

Our organization may not be known to all members of the Commission, so may I briefly say that it is the oldest farm cooperative in western Canada and also one of the country's largest grain-handling organizations. Annually we pay to the







railways in freight charges some \$12 million or more, the burden of which rests, of course, primarily upon western producers. From the nature and the history of our company it has long been recognized as having both a duty and a right to speak on behalf of western farmers on questions of national policy. There is no segment of the country's population more interested in this inquiry nor more dependent upon railway service than the farmers of the prairie provinces -- as grain producers, I would say. Their product moves to export markets by water, but, to reach ocean and lake ports, it must undertake the long haul over hundreds of miles of barren country, and on the average a rail freight haul of some thousand miles or more is involved. There is probably no other group of farmers in the world so dependent upon railway transportation as are the prairie farmers. On that account, and also because of the importance of the railways in the national economy, it will certainly be in no spirit of antagonism to the railway that we shall be making representations to your Commission.

Before completing our submission, we would wish to study the preliminary material which, as we understood this morning, the railways will be placing before the Commission. If it should happen that our submission is not ready by the time you hold your regional hearings in Western





Canada, we shall be glad to appear in Ottawa at the Commission's convenience.

A major interest -- the greatest interest of our company in railway matters -- is preservation of the structure of statutory grain rates which now prevails in Western Canada. We shall be prepared to defend those rates before the Commission, to say that they do not constitute an inequity in the freight rate structure, and that they do not impose a burden upon other interests in Canada. We have taken note of the fact that your predecessor commission, under the Honourable Mr. Justice Turgeon, declined to enter into a prolonged study of the very contentious subject of railway cost accounting. We wish to submit with deference that your Commission might take a similar attitude and find that such a study on such a contentious matter as the proper procedures in cost accounting need not occupy your attention.

In conclusion, I would say that it will not be our intention to follow the Commission throughout all its public hearings, nor to undertake any very extensive cross-examination of witnesses. There may be on occasion evidence as to which we would like counsel to submit some questions and, if so, we shall ask the concurrence of your Commission in due time.

THE CHAIRMAN: Thank you very much.







MR. DOWNEY: Mr. Chairman, members of the Commission, my name is A. F. Downey, and I am here today representing the Canadian Industrial Traffic League whose head office is in Toronto. The function and purpose of our organization is intimately known to at least one member of your Commission, but for the edification of others I might say our organization is composed of some 1200 traffic managers across Canada from coast to coast, who represent, in turn, firms, individuals, corporations, who purchase transportation services; educational institutions, boards of trade and commerce and trade organizations purchasing transportation services. Our exclusive interest is the protection of the interests of our members in that respect.

I am not at liberty at the moment to intimate or reveal what may be the argument which we shall present in the brief which we would like to submit, preferably at a later date in your hearings; perhaps at Ottawa, if at the pleasure and convenience of the Commission. My sole purpose at this time is merely to record that we do intend to make a submission, and I hope to get some information before the Commission closes the preliminary organizational meeting tomorrow as to your tentative schedule for hearings in the different cities, with the thought in mind that we would prefer, if it meets





with your convenience, to present our submission in Ottawa, preferably near the end of the hearings.

THE CHAIRMAN: Thank you.

MR. FISHER: Mr. Chairman, my name is D. M. Fisher, and I am from Port Arthur, and I have been asked to appear before you by the joint transportation committee of the Fort William and Port Arthur Chambers of Commerce, and the Northwestern Ontario Development Association.

I have been given no advice as to the terms of reference of the Commission, although I do know from preliminary discussions we have had at the lakehead that our groups there want to make references to the national aspects of the transport problem, such as the bridge subsidy and the railway rate differentials with the charges on agreed charges, and also on the Maritime Freight Rates Act and the subventions in that particular field.

The main purpose in asking me to appear before you is to try to put forward as forcible a case as possible that you hold a hearing at Port Arthur or Fort William. Our request would be that en route from the west or to the west you give one day to the hearings at the lakehead. I can assure you that at least two briefs will be presented -- I think more -- and that there will be a number of witnesses. This is the first time







that our region has made this kind of a request, and I think everyone here is aware that Ontario has never felt it necessary in the past to appear as a province. We have the assurance, as a region, from the provincial authorities that they will help and support us in preparation for the brief that will be submitted.

THE CHAIRMAN: Have they informed you as to whether they are going to make a presentation on behalf of the Province itself, as well as yours?

MR. FISHER: No. My understanding is that they are going to provide us with the expertize to prepare a regional brief. The point is, we feel we have a regional economy and that we can show inequities in so far as transportation is concerned, and that we should, on the scene, have an opportunity of presenting these arguments to the Commission. We would appreciate it very much if the Commission will consider this very seriously. Our problems in no way are identical with Manitoba, but grow from the same differences, and that is one of the reasons why we would prefer to make our presentation at the lakehead rather than at Winnipeg.

We would like as much time as possible to present the brief, because we haven't the resources which these other regions and provinces have, and preparation is going to take that much more time. We hope you will give favourable





consideration to this, and I can assure you that in the time which you spend at the lakehead you will find, I think, evidence to support what I am saying, that we are a unique region in a unique economy that is very seriously affected by the transportation problem and the increase in transportation costs.

THE CHAIRMAN: Thank you, Mr. Fisher.  
Are there any more submissions?

I did say -- or, at least, I intended to say -- that if counsel for the railways wished to reply to any of these submissions, it is in order for them to do so.

MR. FRAWLEY: Mr. Chairman, in that regard, particularly in view of what you have just said in asking Mr. Sinclair to comment on some of the representations, with your approval I would like to speak very briefly to what I regard as an exceedingly important matter which only arose as a result of a conversation I had with Mr. Sinclair just after you rose at noon. I won't be long in developing it.

I spoke to Mr. Sinclair just after the Commission rose at lunch, and I asked him whether or not ---

THE CHAIRMAN: Is this a private conversation?

MR. SINCLAIR: I was going to make a suggestion in regard to this which I think, in view of







some remarks you made this morning, that if Mr. Frawley wants to talk some more about it after, I will make the suggestion ---

MR. FRAWLEY: Well, I am always willing to hear what Mr. Sinclair has to say.

MR. SINCLAIR: I didn't know when I was talking to my friend that he was going to start quoting.

MR. FRAWLEY: There is an implication there that I don't like. I assure my friend that the answer he gave me ---

MR. SINCLAIR: If you find any offence in that remark, Mr. Frawley, I withdraw it.

MR. FRAWLEY: Thank you very much; I am glad you did.

MR. SINCLAIR: Mr. Chairman, members of the Commission, it was likely my fault entirely, but it seems to me that there was a suggestion that Canadian Pacific would be able to proceed with its views to present to this Commission immediately, and that we would be given the right to begin -- if I am using the phrase right. People from the provinces and also counsel representing the provinces seem to take it for granted that the railways were the people who were really to come forward with suggestions which would then be met. I would like to emphasize we are not in that position at all except in regard to one or two matters, and if





we were proceeding first, as I thought we made clear, our position definitely would be that the only inequity of significance that we knew of in the freight rates structure was that having to do with the statutory grain rates. So, if anybody else felt there were any other inequities, they would not be getting any assistance from our submission, because our submission would be that there would be none.

THE CHAIRMAN: Yes, I understand.

MR. SINCLAIR: In regard to "obligations and limitations", mainly again we would be in the position of the statutory grain rates, although there may be a few minor things.

Our position on achieving more economic and efficient railway transportation is really a question of finance.

On (d) I would like to emphasize again what I thought was clear. Some of my friends seem to overlook it. The clause starts with the word "whether", and it also says, "should they be specified": "whether" and "should they be specified": "whether assets should be specified". There is no suggestion in that, I would take it, that the existing Railway Act does not meet it, except for the question of specification. I did think it would need some clarification on a number of points. We would be in a position to submit a brief of points in about a month to six weeks. That would be a very







small document, because I then follow it up by saying that a month before the witnesses would be called we would give precis of evidence.

THE CHAIRMAN: Yes.

MR. SINCLAIR: I think my friend can know what that means, as far as I am concerned: that the points would be mere points with very little expansion; but, the precis of evidence would be a pretty full statement of our position. So, therefore, if they were looking for us to proceed first, I can see, if I may make the suggestion, possibly some evidence, in the light of what was said by my friend Mr. Smith and Mr. Brazier and some other of my friends who spoke here, that our position in regard to the statutory grain rates might be a separate presentation, in which we would take the position of going first. However, in all other matters we would go last, having answered the various positions that other people may want to advance.

I noted your direction, Mr. Chairman, this morning to my friend Mr. MacKimmie that he and I were to meet and see, after you adjourn, if we could arrive at some modus that would be satisfactory to my friend Mr. MacKimmie, and I think that could possibly be extended to Mr. Frawley, because this has to do with certain questions of the cost on which we could talk frankly amongst ourselves, and, having known both of my learned





friends for some time, I have found them to be completely reasonable in all matters except those which represent the views of their clients. So, I think we would come out of that meeting with complete unanimity in most things. In any event, we will try, and I would suggest Mr. Frawley might join that in view of one of the things we were discussing -- cost. In doing that, I think we can, maybe, agree -- or, disagreements would be at least clarified.

There is one other thing that I think requires some clarification, Mr. Chairman, and that has to do with the question of labour. I heard Mr. Hutchinson say something about that. I have met him in other form, and I heard other people say something, but if the Commission is going to inquire into labour, it would be of great assistance to my clients if we knew the scope of that, because we have some pretty definite views in different parts.

THE CHAIRMAN: I would, personally, rather be out of it. I spent about a year and a half of my life doing nothing else but that.

MR. SINCLAIR: Well, I can say this from my own experience, that if we are going to hear and make submissions on, shall I say, working conditions or on collective bargaining and methods of collective bargaining, then I would like to know, because I have got some preparation to do, and I can assure the Commission that if we get into some aspects of







it we had better know now because we are going to have to make some plans for being here a fairly long time.

THE CHAIRMAN: I think so, and I would observe that perhaps there is some similarity between the collective agreement and the Crow's Nest Agreement.

MR. SINCLAIR: Except this, Mr. Chairman, speaking for the Canadian Pacific, that the collective agreements we have are extant documents, and the so-called Crow's Nest Agreement has not been an extant document since 1925, and I refer to page 225 of the old Royal Commission, that it is not based on contract but on statute.

THE CHAIRMAN: Yes, I know.

MR. SINCLAIR: We would like a directive on this, because it is a serious matter -- the whole ambit of it -- and I think possibly Mr. Hutchinson could be asked to clarify what he had in mind, and maybe he is prepared to do so, so that the Commission could direct the ambit of the labour field it wants to go into, because I certainly suggest to the Commission it would be a matter of great assistance to myself in getting instructions from my clients in regard to it.

The other point is that both Mr. Frawley and Mr. Brazier have dealt with pricing, and Mr. Mauro dealt with methods of general increases. Once





again, our position would necessarily be one of answering and not proposing -- speaking for Canadian Pacific. We would certainly be very interested in considering and looking at what Mr. Brazier might be bringing forward, and if we were in a position where we could agree with him, that would be fine, and we would like to say so if we had some other thoughts on it after looking at his techniques and that of his experts. We would like to say what we thought about that, and the same would go for Mr. Frawley who indicated he had some expert evidence in regard to pricing. We would not want to anticipate Mr. Frawley's expert evidence and, therefore, we would necessarily have to hear it.

In summary, the suggestion I would make, in view of my friends' remarks, is that we would proceed on that basis where we advance positive material of a large degree, and we would have some other positive material too, and we would try to get our brief of points together and give our precis of evidence. However, I suggest our filing arrangements on that wait until we have had this conference, which I think should be extended to Mr. Frawley.

MR. McDONALD: Mr. Chairman, I agree generally with what Mr. Sinclair has said. I think, in so far as my own thoughts are concerned -- we haven't had a chance to discuss it -- as far as the







Crow's Nest rates are concerned, when we file our brief we could give the result of our study and how it was arrived at generally. We can't give all the material. I think it is a good suggestion that something might be worked out in a conference to shorten the proceedings somewhat; if we had some expert who could talk and explain to them, instead of taking up the time of the Commission, perhaps that man would be satisfied to say that the procedure they have adopted in ascertaining the costs is sound, or, "I disagree with them in some respects." It is far better than examining and cross-examining witnesses. Our idea of the brief was that we might set out the result of our Crow's Nest study. We could give our representations and recommendations on the other points, but, as far as inequities in the freight rates structure are concerned, we cannot anticipate those until we hear what they are.

THE CHAIRMAN: Mr. Cooper, have you anything to add here?

MR. COOPER: Mr. Chairman, I have very little to add to what already has been said at this point. I find myself generally in agreement with what has been said with respect to the interpretation of the Order in Council and the scope of reference of this Commission, except with respect to the views of those who hold that statutory rates do not come within the terms of reference. It is my opinion





that statutory rates do come within the terms of reference of the Commission and, of course, it is for the Commission to decide to what extent it will inquire into that matter.

That, I think, Mr. Chairman, is all I can usefully say at this time, except that I do wish to assure counsel who are here and who have spoken today, and all others who will be appearing before the Commission as representing companies and organizations, that I will be anxious to do everything that I can possibly do to expedite their efforts, and by that means assist in the most important work of the Commission.

THE CHAIRMAN: Mr. Cumming:

MR. CUMMING: I have nothing to add, Mr. Chairman, save that I join with my leader in an assurance of assistance and cooperation with all those who are here.

THE CHAIRMAN: Thank you.

MR. FRAWLEY: Mr. Chairman, with your approval, sir, I must ask my friend Mr. Sinclair whether he was suggesting we have a conference with respect to the matter I put to him at noon?

MR. SINCLAIR: Yes.

MR. FRAWLEY: Because I am quite willing there should be a conference, because depending on the success of that conference we may or may not want to come back to the Commission and ask for a







ruling; and, if I understood my friend correctly, then, let us have a conference, but certainly that conference could take place almost immediately, depending on the wish of the Commission.

THE CHAIRMAN: Is there anyone else who wishes to make any submission at this stage?

Well, then, gentlemen, I think perhaps we had better adjourn until tomorrow morning at ten p'clock, at which time we may rule on certain things, but we will have the suggestion in mind with respect to Dean Cronkite's desire to submit an argument in writing before a ruling takes place.

MR. SINCLAIR: Mr. Chairman, if there is going to be a legal argument, as I understand it, filed on behalf of the Province of Saskatchewan by my learned friend Dean Cronkite, and any ruling of the Commission was to be reserved until after that had been received and considered, there may be some of us who could be of some assistance. I don't know, but maybe we would like the opportunity of having our views known in answer to what the learned dean might put forward.

THE CHAIRMAN: Well, Professor Britnell, is that argument in writing now?

MR. BRITNELL: No, not in complete form.

THE CHAIRMAN: Well, could it be put together so that you or somebody else, if Dean Cronkite is too ill to be here, could present it tomorrow?





MR. BRITNELL: I will undertake to try and see that that is done, because I realize the desire to expedite these proceedings.

THE CHAIRMAN: Well, then, I think that perhaps settles part of the problem: we will know the argument in the morning.

MR. SINCLAIR: It all depends on how erudite and difficult it is to follow. Perhaps we could see it and make submissions.

MR. BRITNELL: I will try to undertake to have it in your hands by ten o'clock tomorrow morning.

THE CHAIRMAN: Thank you very much.

We will adjourn until ten o'clock tomorrow morning at which time we will try to make the rulings, or some of them, that are requested, and I do hope, Mr. Sinclair, that you and Mr. Frawley will be able to get along as well as usual.

MR. SINCLAIR: I hope better, sir.

---Whereupon the hearing adjourned at 3.20 p.m.  
until 10.00 a.m. tomorrow morning.







Ottawa, Ontario,  
Friday,  
September 18, 1959

---On resuming at 10.05 a.m.

THE CHAIRMAN: I believe that we contemplated opening the proceedings with an argument from Dean Cronkite. I hope you are feeling better this morning.

DEAN CRONKITE: Thank you very much.

Mr. Chairman and members of the Board, I would like to express my personal appreciation for the arrangement of this preliminary meeting so that the persons interested will know a little something of what it is about. Also, if these sentiments have not already been expressed I would like to say, on behalf of the Province of Saskatchewan for which I am acting as counsel, that I am sorry for my absence yesterday; I cannot apologize because it was not of my own making. It was due to illness; no mortal illness, but just a sick sickness in which any food I ate denied all forces of gravity. And I was made a little sicker when I heard of the, to my mind, most remarkable proposal that my friend Mr. Sinclair had made, which proposal was all wrapped up nicely like a Christmas parcel, and which, apparently, is well on its way to making the Crow's Nes Pass rates on export grain the whipping boy of this inquiry, and I am sure this





inquiry was not designed for that purpose.

I understand, sir, that many people here would like to get away by noon, so I do not propose to be very long. I would not have been here at all except that I understood that I was committed yesterday to prepare a written statement, and that frightened me so much, especially as it would have involved getting some legal authorities, that I decided to get well in a hurry and be here in person.

THE CHAIRMAN: The principle of gravity probably had something to do with that.

DEAN CRONKITE: Yes, it may have. It does remarkable things, especially in the hands of skilled railway counsel. At any rate, I am here, and I want in a very few minutes, because I know a lot of people want to get away by noon, to make the position of my province quite clear on certain matters, and, incidentally, I am going to say something about the proposal of both the railways that certain exhibits be permitted on their behalf with reference to the Crow's Nest Pass rates.

Putting it in blunt terms, I want to protest very vigorously against the thought of an exhibit on costs of the transportation or movement of export grain being particularly investigated. I know that the proposal -- and I am going by hearsay a good deal -- was delightfully wrapped up with a sugar coating, even in pastel shades,







but I am now, as I have been for a long time, very much afraid of Greeks bearing gifts, and I expect that a lot of wooden horses will appear before very long.

We feel that our position should not be disturbed by the directive to your Commission; that the position of the grain producers in our province is very satisfactory -- not entirely satisfactory, but very satisfactory -- so far as the Crow's Nest Pass rates are concerned; that these rates as they are were designed for the assistance of grain producers, and that in no other form can the people for whom they were designed be protected.

It is my understanding, Mr. Chairman, that my friend Mr. Sinclair, bases his right to have this exhibit put before your Commission mainly on paragraph (a) of the directive, using the words "inequities in the freight rate structure".

MR. SINCLAIR: And paragraph (b) also.

DEAN CRONKITE: Yes, I will come to that.

MR. SINCLAIR: And paragraph (e), if I need it.

DEAN CRONKITE: Well, I think you will. Now, I know that my friend Mr. Sinclair, like myself, has always had difficulties with the word "inequities", and I do not object when he couples the word "unfairness" with "inequities". I think that is quite right, unless we get so many words that we do





not know anything about the matter. My objection to this, Mr. Chairman, is that inequities in the minds of the railways refers only to inequities, actual or fancied, to the railways, whereas this matter cannot be considered without the position of the grain producers being considered, of course, and if I were ---

THE CHAIRMAN: Well, it is "inequities in the freight rates structure."

DEAN CRONKITE: Yes, but my point is that this word "inequities" cannot be isolated to apply to this factor, that the present situation prevents the railways from charging higher freight rates to the producer. In the light of long and continued history there is the equity also of the producer involved, and as you yourself, Mr. Chairman, observed---

THE CHAIRMAN: That is just what I was wondering about, Dean Cronkite. The reference in the wording to its being in the freight rates structure has nothing more to do with the railways than the other people that the freight rates structure affects. It is not the inequity to the railways nor to the grain producers; the inequity that is referred to here, it seems to me, is described quite clearly, and it is in the freight rate structure.

DEAN CRONKITE: Well, it has got to be, sir. It is an inequity to everybody upon whom there







is an impingement by the present structure, and it cannot be isolated to the lower income obtained by the railways which it is alleged, but not admitted by us, they are obtaining.

THE CHAIRMAN: That is probably a matter of argument and weight. It is not an argument in regard to the exclusion of evidence.

DEAN CRONKITE: No. I will put it this way, that this type of evidence of itself would not show an inequity necessarily, because there is the position of the producers in an established freight rate structure to be considered, and ultimately the position of probably everybody in Canada who is affected, directly or indirectly, by the rates.

My only point at the moment is to say that the production of a cost analysis will not of itself indicate any inequity in relation to the wording of the whole paragraph.

As my friend Mr. Sinclair said a moment ago, and as I have no doubt he said yesterday -- and I very much regret not having heard what he had to say, but he probably relied largely on paragraph (b) of the directive to your Commission:

"the obligations and limitations imposed upon

"railways by law for reasons of public policy. . ."  
and so on. I want to take two or three objections to the admissibility of this evidence under that paragraph. The fact is that properly speaking this





is not a limitation imposed upon the railways by law. Going back into history this is essentially a limitation imposed upon the railways by agreement.

THE CHAIRMAN: Oh, yes, but do you not give any effect to the 1925 amendment to the Railway Act?

DEAN CRONKITE: Yes, and we could go back further than that. It had, in its earliest time, a statutory recognition, and I know there could be some possible objection to what I have to say, but I hope it will be reserved until later. The Prime Minister of Canada himself, who ought to be reasonably conversant with the situation ---

THE CHAIRMAN: Well, we have dealt with that, Dean Cronkite. We have before us a reference under the Public Inquiries Act by Order in Council, and that is our reference, and while it does not actually make any difference, I suppose, we do come under the jurisdiction of the Prime Minister's department so far as that is concerned. I do not see how we can give effect to the observations of someone else in respect of this Order in Council, and I do not think it even goes that far, no matter what the eminence or the position of the person may be.

DEAN CRONKITE: That is true, sir, but with your permission in two or three minutes from now I hope to have the privilege of speaking to







that matter. I am quite in agreement with the statement that you have your document to adhere to, and I am not saying that the words of the Prime Minister, or of any other man, should overrule it, but I am saying that you certainly can avail yourselves of all methods of interpretation as to what the document means.

THE CHAIRMAN: Oh, yes.

DEAN CRONKITE: For instance, I suppose you might, having regard to the fact that you are hearing us, pay some attention what my friend Mr. Sinclair or I say, although we might be, I suppose, a whole lot more biased than the Prime Minister.

THE CHAIRMAN: I suppose, Dean Cronkite, it is something like the process of construing a will. You do it from the document and not from what some friend or somebody else said about it at some time.

DEAN CRONKITE: You do, but if you were as much in agreement with me as the judges have been in the construction of wills you would admit the validity of the statements made at the time of the making of the will, or afterwards, as to what was meant by the testator. I am not going that far ---

THE CHAIRMAN: Of course, that is in the case of where there is ambiguity.

DEAN CRONKITE: Well, of course, I think





there is abiguity here. At any rate, I will use the words of the Prime Minister for the moment as my own, if you like. The Crow's Nest Pass rates are part of a bargain ---

MR. SINCLAIR: Pardon me; although I respect the views of the very experienced gentleman in matters of this kind I am sure he would be quite prepared to admit that it is a well established principle that once there is a document such as this it has the force of law, and you cannot give any answer or part of an answer to assist any person in its interpretation.

THE CHAIRMAN: I think we have already ruled on that. We ruled on it yesterday, so far as that is concerned. We might have been persuaded otherwise had you been here, but ---

DEAN CRONKITE: I did not hear the ruling, but it does not make it any the less definite. I would like to come back to that later on; it will not take more than a minute. I would like to give my views as to Mr. Sinclair's last remark. I certainly know that, but that rule does not primarily apply for the guidance of courts in the construction of statutory documents. As to whether it is equally applicable here or not I am not prepared to say.

At any rate, quite apart from the Prime Minister it is my submission, and the submission of







the province, that this is, in essence, an agreement rather than a limitation imposed upon the railways by law, despite the fact that there has been statutory approval and change of the original bargain ---

THE CHAIRMAN: What do you mean by "statutory approval"? That was a statute, was it not, which just simply overrode the agreement?

DEAN CRONKITE: Yes, in the first instance.

THE CHAIRMAN: It is not an approval of the agreement. I would think it would have been a disapproval of it.

DEAN CRONKITE: In the first instance I think it would be substantially true to say that the statute pretty well incorporated the agreement by reference, and later on certainly there were direct changes more than once, sometimes against the grain growers and sometimes in their favour. That is my first point here.

My second point is that the words "the obligations and limitations imposed upon railways by law" are altogether too uncertain to embrace the details of the proposal put forward by the railways yesterday. These words might include almost everything. I suppose they would, on their broadest interpretation, include all the regulations imposed through the controls exercised by the Board of Transport Commissioners. I do submit, sir, that they do not include anything like the





details of the cost analysis of one particular item in the whole rate structure. My submission is that these words describe the fact of the obligations and limitations imposed upon the railways -- the fact of this control and that control and the other control -- rather than the digging into the details of the alleged cost prejudice suffered by the railways in the case of this particular rate.

I do, sir, want your indulgence for a moment or two, and if you cannot put this down to the forwarding of the efforts of the Commission then perhaps you can put it down to the education of Mr. Sinclair and me in the law of evidence. I would like to refer -- and I have no doubt it was referred to yesterday -- to the exchange -- and not an acrimonious exchange for a change -- appearing in the House of Commons Hansard of May 18th of the current year. ---

THE CHAIRMAN: Now, Dean Cronkite, you have gone around to the back door. Is that the Hansard which contains the remarks of the Prime Minister and Mr. Chevrrier?

DEAN CRONKITE: That is correct, sir.

THE CHAIRMAN: Well, we have already ruled on that.

DEAN CRONKITE: As I say, I would like your indulgence and permission for me to say a few words on it.







THE CHAIRMAN: We are all familiar with it, and we do not think it is relevant to this matter.

DEAN CRONKITE: All right; the gist of it was ---

THE CHAIRMAN: I do not care even about the gist. Do not try to ---

DEAN CRONKITE: No, I am just going to identify what I am talking about.

THE CHAIRMAN: Well, we do not need any identification of that.

DEAN CRONKITE: The Prime Minister and Mr. Chevrier did seem to agree that the ---

THE CHAIRMAN: "Seem" is a good word.

DEAN CRONKITE: Yes, although in the case of Mr. Diefenbaker, he said: "I have not challenged the hon. member's interpretation," and that was as to a consideration of the Crow's Nest Pass rates being excluded from the work of this Commission. What I want to say is this, sir, that I am not for a moment disputing the validity of what I think very likely was the ruling made yesterday, or of Mr. Sinclair's generalization that you have to look at the document itself -- the statutory document -- but there is a well-defined rule to the effect that a court of law cannot look at the words of members of parliament in the consideration of a bill, even the words of the responsible minister who perhaps introduced





the bill, although I have noticed, and I have no doubt about it, that judges do read them. They always say after they have reached their conclusion that it is a matter of great delight to find that the appropriate minister felt the same way. I do not deny for a moment that it is certainly the document itself that has to be construed, but certainly a court -- and I do not think this is a court; it is by name, but I certainly could not identify any parties which are contending, and if my hearsay reports of what transpired yesterday are correct I am very much in doubt as to what the matter in dispute before the Commission is ---

THE CHAIRMAN: We have not anything in dispute here at the moment. We are trying to arrive at a plan of procedure, of times and dates for hearings, which will be satisfactory to the public.

DEAN CRONKITE: And I think you will agree, sir, that this, strictly speaking, is not a court of law, and, therefore, the rule that my learned friend ---

THE CHAIRMAN: I might say, Dean Cronkite, that I feel just as comfortable on it.

DEAN CRONKITE: I am very glad that you do, sir. I think that if I were in your place I would feel more uncomfortable than in some courts, but what I am getting at is this, that this rule of







construction that you have to construe a document excluding the remarks of parliamentarians is not strictly applicable to anything but courts.

If I may just take a few moments, sir, I suppose in construing what was meant in the words here, or in any other statutory document, the court or commission will look to anything that throws light on their probable meaning. I think it is one of the most fundamental principles of the law of evidence, that matters logically relevant are legally admissible unless, of course, they are excluded by some positive rule.

THE CHAIRMAN: Sometimes I doubt the proposition of logical relevance.

DEAN CRONKITE: Of course, there is a pretty wide area for dispute as to what is logical, but I do insist that that is a fundamental proposition just as much as the proposition that matters logically irrelevant are legally inadmissible unless there is some extraneous rule letting them in.

It is my point, sir, that you will even listen to Mr. Sinclair or to me, biased as we are, in our attempts to give a meaning to these words. It seems to me that it is just as logical to look at the meaning ascribed to words by the Prime Minister of Canada, or by the former Minister of Transport, The Honourable Mr. Chevrier, particularly





in the light of the circumstances that at least for once in their lives they were in agreement on something. They seem to have been in agreement, although they were to make different uses, they have made different uses ---

THE CHAIRMAN: Let us not go back to that again. I do not like to be any more aggressive or obstinate than you are, so far as that is concerned, but we have to have some order here in this. We have already stated our position in respect of that.

DEAN CRONKITE: Well, of course, that matter is in your hands, but I did want to state my position, and I would like to add one remark from an eminent judge, the former Mr. Justice Oliver Wendell Holmes, who said that a word that is not crystal clear and transparent is a segment of a living thought, and may vary tremendously according to the time and circumstance in which it is used.

THE CHAIRMAN: I am quite aware of that.

DEAN CRONKITE: Yes, and I would point out ---

THE CHAIRMAN: However, this is not the kind of time nor were they kind of words that Mr. Justice Holmes was dealing with. You know that.

DEAN CRONKITE: I suppose there is a great variation there. If he was in the prairies the word "hail" would have a different meaning than







if he was going to church and saw a black sky blowing up. Similarly, words used by the Government of Canada in a directive to a Royal Commission must mean something different from the meaning of the same words when used by an idle group of people on a street corner. I do submit, despite your ruling, that their words are very important, not in being substituted for this document or Order in Council but in finding out what the meaning of this is. As a result of all this I do submit very definitely that it is just inconceivable to my mind that the Government of Canada in an Order in Council would have directed that matters be investigated in the form that the railways have asked them to be without expressing it in very clear words. I think it is as applicable to members of government as to members of parliament and that they are not to be deemed to have done absurd things, and I would say without spelling this out that this is a type of investigation that I would call rather remarkable, unless it were set out in express terms rather than the general terms which, to my mind, refer to the consideration of the fact of these very many obligations and limitations. My friend Mr. Sinclair might be surprised when I say that I think there are some improper limitations imposed on the railways but not, I hasten to say, in connection with the Crow's Nest Pass rates.





I say all of that, sir, in the background that we in the Province of Saskatchewan -- and I do not want to get into the merits other than the procedures, although I do not think I would be the first person who has trespassed -- but we in Saskatchewan are very definitely of the opinion that this is a fundamental part of the rate structure of Canada, and that it ought not to be disturbed, and was not intended to be disturbed by the Government of Canada.

We could put it all in another way. We know that the railways need more money to operate. We have no doubt that they are very necessary, and we know they have got to have more money, and the Government of Saskatchewan will not object in the least to public assistance to them. We think they ought to have it, but we do not want the public assistance to come in the form of tinkering with this established ---

THE CHAIRMAN: Do you know how much more money they need?

DEAN CRONKITE: I would not like to say what it is today, but ---

THE CHAIRMAN: That is what we are hoping to try to find out -- at least, it is one of the things.

DEAN CRONKITE: Well, I do hope that the Commission -- and I am glad that you mentioned this -- will not depend on the railways or the ten







provinces to get that information. I am speaking for my province when I say that I hope the Commission will try to find out all of these things. I am afraid if you depend only on the evidence that you get from the ten provinces and the railways you will get a very disjointed picture, and it is no offence to my friend Mr. Sinclair or to anyone else, to say that you may at times get a biased picture. Even with my high regard for myself I would hate to say that I never got biased, and I may with all honesty give a biased picture, so I do hope, sir, that the Commission, as an unbiased organization, will take steps to get the truth of the matter because that is what we are really after, by its own efforts supplemented, of course, by the representations which will be made to it by the various interests involved.

Since by your remark you opened up this matter somewhat, I can also say for our province that we would agree with an interpretation that would allow us as full an investigation as the Commission feels necessary into other forms of freight transportation, such as trucks, pipe lines, air lines, and so on.

I hope I have made it clear, sir, that the Province of Saskatchewan is not unfavourable to railways, but it is diametrically opposed to the inclusion of this type of inquiry into the Crow's Nest Pass rates, and believes it has a legal right





behind it.

Thank you very much, sir, for not throwing me out when I talked about something which was threshed straw to you but which, of course, to my own mind is very live straw.

THE CHAIRMAN: Thank you very much.

Mr. Sinclair, you did make a reply to the others yesterday, and I think you should have an opportunity to reply to this submission.

MR. SINCLAIR: I think it might be of assistance to have it after the same point in the record. Starting first with respect to my friend's point on the inequities in the freight rate structure, I agree with him when he says later on in his remarks that the grain rates are a fundamental part of the rate structure. They are a fundamental part of the rate structure and are prescribed as a fundamental part by statute, and it is a question of truth, in my submission to you, as to whether they are or are not inequitable. It is the position of the railways, the Canadian National and the Canadian Pacific, that they are inequitable. That is all I have to say on my friend's first point.

On the second point as to whether this matter is an obligation I submit it certainly is an obligation because it is provided for in the statute, and it is imposed on the railways because the statute is applicable to the railways. Section 328 of the







Railway Act, subsections (6) and (7) make that abundantly clear.

As to whether it is a limitation imposed by law, I would just like to read one paragraph -- and this was a result of an argument that a number of my friends, some of whom are in different places at the present time, had about a subject very similar to the one that is being now discussed. I would like to read from page 245 of the Turgeon Royal Commission's Report, and this is a finding of an extremely eminent jurist who had listened to arguments down through the years by Dean Cronkite and other eminent lawyers from the Province of Saskatchewan, some of whom are here and some of whom are in another place. This is what Mr. Justice Turgeon thought, and I am reading from page 245 of the printed copy of the 1951 Turgeon Royal Commission's Report:

"The fact is that the real intention of

"the amendment of Section 325 of the

"Railway Act . . ." --

that is, Section 325 of the Revised Statutes of 1927, and is now Section 328 --

"The fact is that the real intention of

"the amendment of Section 325 of the

"Railway Act passed in 1925, and already

"quoted, was to put an end to the Agree-

"ment of 1897 as between the parties to





"it (the Government and the Canadian  
"Pacific Railway) and to prescribe in-  
"stead a statutory stabilization of cer-  
"tain freight rates binding on all the  
"railways, in order to meet a condition  
"then existing, a condition which was  
"foreseen in 1897 and which had come into  
"being during the many years the contract  
"was in force and very largely through the  
"operation of that contract. It seems  
"clear that the reference made to the Agree-  
"ment of 1897 in the legislation of 1925,  
"and still in the statute, was intended  
"merely to be descriptive of the rates  
"which Parliament was prescribing for use  
"thereafter on all lines of all the rail-  
"ways in the area mentioned."

Mr. Chairman and members of the Commis-  
sion, necessarily that must be the finding because  
the Supreme Court of Canada had found that under the  
agreement the rates were only applicable to shipping  
points in existence in 1897, and since 1925 they  
have been applicable to all the shipping points on  
all lines of railways, and not just to the Canadian  
Pacific but to the Canadian National as well, and  
they are today applicable to movements through  
Churchill, through Vancouver, and under the Agree-  
ment they were not applicable through Vancouver or







any other Pacific port.

In addition, from 1927 on, by virtue of what is now subsection (7), they were made mile for mile, branch line and main line alike, whereas under the Agreement branch line points were carrying a substantially higher rate than main line points, mile for mile. The fundamental difference between the Agreement and the present grain rates would make it impossible for persons who had looked at the matter carefully to contend that these rates are now subject to agreement and controlled by agreement, and as the learned Mr. Justice Turgeon said, the reference to them is described as being to the rates -- that is, the level -- rather than having to do with the contract. That is all I have to say on that point.

Of course, it goes on to use the word "burden", and my friend Dean Cronkite said that it was remarkable to suggest that we should look at "burden" further. What I say as to that is that there are many ways of looking at the burden. If it is relevant evidence then I say it is admissible. One of those matters is a question of the level of the proposal in relation to all other rates having the same characteristics of movement, and so on, such as grain. Another question would be: What is the cost, and what is the factor over cost that the railways might be suggesting as a just and reasonable rate? "Burden" is a question of truth,





and it was on that basis that I made the submission I made yesterday. I think that is all I have to say.

DEAN CRONKITE: Sir, I have just one ---

THE CHAIRMAN: Just a moment.

COMMISSIONER MacPHERSON: Mr. Sinclair, I was listening to you yesterday, and again today, and I am interested now not as counsel but as a member of this Commission, and I was concerned with the emphasis you are placing particularly on the statutory rates.

MR. SINCLAIR: Yes, sir.

COMMISSIONER MacPHERSON: Do you not feel that you are over-simplifying the issues before the Commission? You emphasized that this was the one item which was an inequity and which deserved the consideration of this Commission. Now, is it not a fact that freight carries the load in respect to rail enterprises?

MR. SINCLAIR: Is it not a fact?

COMMISSIONER MacPHERSON: Yes.

MR. SINCLAIR: Yes, it is a fact.

COMMISSIONER MacPHERSON: Freight provides under the formula that the Board of Transport Commissioners have worked out, the charges on rail enterprises and the dividends and the surplus allowances, and all that sort of thing. That comes from freight?

MR. SINCLAIR: The dividends that the Board allows come from the freight.







COMMISSIONER MacPHERSON: Yes, and what is more, freight must carry the other services of the railways such as passengers and dining car services; all of those services must be carried by freight?

MR. SINCLAIR: That is correct.

COMMISSIONER MacPHERSON: And we have many other inequities, or alleged inequities, such as the horizontal increase, that we have heard of? That has been discussed?

MR. SINCLAIR: That is an alleged inequity.

COMMISSIONER MacPHERSON: Yes, but it is one that is of importance to some parts of the country?

MR. SINCLAIR: They have said it was.

COMMISSIONER MacPHERSON: And yet you would not think it is important? The important thing that I want to refer to is the fact that you emphasized only the statutory rates yesterday, and again this morning.

MR. SINCLAIR: Yes, sir.

COMMISSIONER MacPHERSON: But this Commission must deal with all inequities, and possibly the greatest inequity of all is that freight carries the load for the whole rail enterprise?

MR. SINCLAIR: Well, with respect, sir, I can answer Yes to the questions in which you have outlined the history of them, but I would not agree that horizontal increases result in inequities. I would





say that the freight rate structure today is a realistic structure with some differences in it which reflect requirements in the movement of traffic. I would not be surprised to have some person say that there was some unfairness here or there in regard to an individual rate, but there is provision under the Railway Act to take care of that. What I said was that the only inequity of significance that I knew of, and which so overshadows everything else -- when we are talking here of the Canadian Pacific it means something in the region of \$35 million to \$40 million in revenue as a minimum, and possibly more under today's conditions, year after year. When looking at that I find it extremely difficult to think of a difference in rates of, say, 2 cents a hundred as being significant.

COMMISSIONER MacPHERSON: Mr. Sinclair, in the last ten years there have been new words introduced into our freight rate language, such as "erosion" and "attrition". Does not that indicate that there has been a measure of something in the matter of competitive rates that affect the various regions of the country where there may be claimed to be inequities?

MR. SINCLAIR: Someone might allege that.

COMMISSIONER MacPHERSON: But the position of the C.P.R. is that that allegation is not valid?

MR. SINCLAIR: The position of the Canadian







Pacific Railway Company is that the freight rate structure, which is based on the value of service principle, is a valid way of making rates; that the value of service principle has been circumvented to the degree that the impact of competition has reduced its range, and that the erosion and attrition is a fact but it results in the fact that some of the higher rated so-called commodities are not able to make as great a contribution to total railway expenses as they used to make before the advent of competition throughout Canada, and as a result of that there is some attrition and some erosion.

COMMISSIONER MacPHERSON: You will recognize the items I have referred to as alleged inequities, but you maintain the emphasis should be placed on statutory rates, as you are placing it?

MR. SINCLAIR: Of course, sir, because they have remained at a level set in Queen Victoria's day notwithstanding the tremendous increases in the cost of transportation that have gone on in those years.

COMMISSIONER MacPHERSON: But in order to be fair from the Commission's standpoint, the figures given by you yesterday as to lost revenue---

MR. SINCLAIR: Yes?

COMMISSIONER MacPHERSON: Some of these would apply to the carrying of such services as the passenger service of the railways at the present time?





MR. SINCLAIR: What I said yesterday, sir, was this, that if a general increase had been applied to grain in the postwar period -- that is, from 1948 to 1958 -- then the increase in the gross revenues of the Canadian Pacific would have been approximately \$235 million higher than they were. The Board of Transport Commissioners in fixing the permissive level of net rail earnings certainly took a look at total rail earnings including those of the passenger and dining car service.

COMMISSIONER MacPHERSON: And mail?

MR. SINCLAIR: Yes, and mail. Mail rates, in any event, have been increased substantially in the postwar period. I do not know of any rates that are not subject to increase except these statutory rates.

MR. FRAWLEY: How about the agreed charges?

COMMISSIONER MacPHERSON: Yes, the agreed charges.

MR. SINCLAIR: Yes, they were subject to increase.

COMMISSIONER MacPHERSON: Well, by agreement.

MR. FRAWLEY: Thirteen out of 700.

MR. SINCLAIR: Yes, by agreement, but they are subject to increase. We recognize, sir, if this is the point, that the passenger traffic is very much of a problem, and we will be presenting at the appropriate time some evidence concerning it, but we will







not accept the position, sir, that the passenger traffic is an inequity in the freight rate structure.

COMMISSIONER MacPHERSON: My only thought was that the emphasis you placed yesterday, and again this morning, on statutory rates, would indicate, perhaps, a narrow view of what was the job of this Commission, and I would say that there are other views that might be provided as well as your own.

MR. SINCLAIR: Quite so. I would be amazed if my friend did not have some other case. I have a positive case. I may have a defensive case, too, but the positive case and the case which transcends in dollars, more than any other case before this Commission, in my submission, is the grain rates and the burden put upon the railway and other shippers. That would be my submission, sir.

THE CHAIRMAN: I might say that I am grateful to you both for a little education here.

MR. SINCLAIR: It is a pleasure, Mr. Chairman, to discuss these matters with Mr. MacPherson, because we have been doing it before and he thinks he knows where I am going before he asks the questions.

COMMISSIONER MacPHERSON: I know what your answers will be, pretty well.

MR. FRAWLEY: Mr. Chairman, I have a report to make as a result of the conference I had yesterday with Mr. Sinclair. You will recall that Mr. Sinclair headed me off when I rose to address the Commission,





and as a result of that it was agreed that I should meet with him afterwards, and if it be the appropriate time I would like to make a report with respect to that meeting and, coupled with it, an application.

May I say first, sir, that I was very pleased to find that you had set aside the two days for the preliminary meeting because it was very useful to leave the meeting yesterday and come back and take stock of what had happened. I was very disturbed, Mr. Chairman, by the trend of the discussion yesterday. Mr. Sinclair showed his usual frankness, and his frankness was what disturbed me so much. I saw the pendulum swinging from the position which I took, and which Mr. Mauro took, yesterday morning that the terms of reference did not permit any investigation of the Crow's Nest Pass rates, right over to the other extremity of the arc of the pendulum, namely, Mr. Sinclair's position that nothing but the Crow's Nest Pass rates should be investigated.

THE CHAIRMAN: Well, now, Mr. Frawley, do you think that people generally drew any conclusion of that kind?

MR. FRAWLEY: Many people that I spoke to---

THE CHAIRMAN: I took it that Mr. Sinclair was saying substantially this: "I am taking the onus in respect of the statutory rates, and so on. If there are other inequities, and so on, the onus is not on me." I do not think Mr. Sinclair was indicating







there were no inequities except the statutory rates.

MR. FRAWLEY: I wanted to say that I have not seen a record because we are not being provided with a daily transcript, but the note I made of his remarks yesterday -- I will be frank in saying that I did not hear him clearly, but my note is that he said there was just one inequity in the true sense of the word, and that was the inadequacy of the Crow's Nest Pass rates. Now, he said there are, of course, differences, but they are not unfair differences, and he said that we would just have to continue to live with them, and at that point he dealt with onus.

THE CHAIRMAN: Did that disturb you?

MR. FRAWLEY: Yes, it is very disturbing to me, sir.

THE CHAIRMAN: What is disturbing about it?

MR. FRAWLEY: Because I say my friend Mr. Sinclair and the other railway counsel have a greater duty upon them than to come before this Commission and simply say: "We are on the offensive with regard to the Crow's Nest Pass rates, and we are on the defensive with regard to everything else. We hold to the view that the Crow's Nest Pass rates are the only inequity." As I said at the beginning, it was that frankness of Mr. Sinclair that disturbed me.

THE CHAIRMAN: Now, Mr. Frawley, I think your difficulty perhaps arises out of the fact that





you have been with Mr. Sinclair and you have been carrying on a controversy which probably was exciting and interesting, and so on and so forth, but I tried to make our position clear yesterday that we are not interested in controversy. We are interested more in what kind of solution is good for this country in connection with it, and I would hope that all counsel will be of help in keeping the atmosphere of controversy as much out of their submissions to this Commission as possible. This is not simply a fight between provinces and the railways, or anything of that kind.

MR. FRAWLEY: Mr. Chairman, I will as I proceed with these very short remarks develop precisely what I am afraid is a very sharp issue which has developed at this early stage. I said that it was a very salutary thing that we were prepared to come before the Commission and discuss the issues, if there are any, between us, and try to get them settled.

Now, I put it to the Commission that there are other inequities in the freight rate structure which must be inquired into, and I would call attention to the fact, for what it is worth, that there is a remarkable identity between paragraph (a) of the Order in Council and the statement made by the Acting Prime Minister on November 26th last when he said that the Government of Canada intended







to take both short-run and long-run steps to alleviate the situation which had developed, and which had been exposed to the Cabinet in the appeal from the 17 per cent award.

In my view, there is a much more important matter in the Canadian freight rate structure than the grain rates, and I would like to have the indulgence of the Commission for a moment to call their attention to the two submissions which I place before the Commission this morning, and they are the submissions which were used in the appeal of the provinces to the cabinet last November. There is a submission which shows that there are other burdens in the Canadian freight rate structure than the burden of the Crow's Nest Pass rates.

THE CHAIRMAN: Mr. Frawley, we were left with the impression that there were other burdens, and lots of burdens. Mr. Sinclair did not influence us, I believe, in coming to the conclusion that there was only one inequity, and that was the statutory rates.

MR. FRAWLEY: If I have not ---

THE CHAIRMAN: If he intended to do that then I will say he did not convince us, but I do not think he intended to.

MR. FRAWLEY: He suddenly took the position that the only burden so far as he was concerned -- and he repeated it again this morning -- was the burden





of the Crow's Nest Pass rates, because those other matters are not burdens. He put to you this morning that the passenger losses were not a burden on the freight rate structure, and I would like to develop that.

THE CHAIRMAN: We are dealing here with the scope of what we are to go into -- the procedure. We are not attempting to solve, at this point, any substantive matter.

MR. FRAWLEY: No, no. This is not the time to argue the various cases; no, not at all, but I must lay the groundwork for the application I am making to the Commission because I am asking for a ruling as a result of Mr. Sinclair's stand, without which I am completely frustrated, and without which I might as well say: "I can have no further part in the work of the Commission." I am not trying to be dramatic, but that is why I would like you, with great respect, to hear me out as to what I have to say to the Commission this morning, because it is leading to a specific request of the Commission for a ruling.

I will pass from endeavouring to convince the Commission that there are other burdens, but I do want to say -- and it is a preliminary to what I am endeavouring to obtain -- that we are seeking the advice of the consultants, and unless I receive certain information from my friend I cannot obtain







that advice. I cannot sufficiently instruct the consultants until I receive the information from my friend.

Now, I put it to the Commission that there is a burden in the agreed charges. My friend will say, and has said many times, that there is no burden because they are all compensatory in the sense that they return the bare out-of-pocket costs, and something more. I put it to the Commission that an examination of the agreed charges would show that many of them -- and I repeat, many of them -- fail to return the fully distributed costs, and if they so fail, sir, then they are a burden on other traffic. That is my proposition, and I am not going to go any further because this is not the time for argument. I simply make that as a premise for what I am proposing to put to the Commission.

I say the competitive rates are a burden on the rate structure. I say that because they are not fully compensatory. Mr. Sinclair will say they are compensatory. I dislike having to put it in that sense, and I am only doing it because I am leading up to the refusal by Mr. Sinclair to give me the information I want. I say to the Commission: "How compensatory are those rates? What portion of the fully distributed costs are the agreed charges and the competitive rates contributing to these all-inclusive costs?" I disagree





when Mr. Sinclair says they are not a burden because they are returning the bare out-of-pocket costs.

Now ---

THE CHAIRMAN: When did Mr. Sinclair say that? Yesterday?

MR. FRAWLEY: Well, whether he said it yesterday, or not -- you said a moment ago, sir, that you felt I was going back to other days when Mr. Sinclair and I were in controversy, but Mr. Sinclair said many times in regard to the agreed charge a rate is not a burden if it returns out-of-pocket costs and something more. I say a rate is a burden when it fails to return the fully distributed costs.

That brings me to the conference I had yesterday afternoon with Mr. Sinclair, which I had with him at his request and which I was glad to have. Commission counsel was at that conference, and other counsel were there as well, and I put it to Mr. Sinclair that in addition to the cost analysis of the grain rates which he is quite ready and willing, and almost eager, to present not only to the Commission but to interested counsel, he should furnish us with cost figures on a good many other movements. I had in mind in making that request those rates which contribute little, those rates which contribute a bit, and those rates which contribute a great deal more than the bare out-of-pocket costs. I had in mind those rates which make







large contributions to the fully distributed costs, or just the costs -- let me use the words "costs of the railways". Mr. Sinclair declined. In other words, he is willing to give us the cost of moving the grain, but he refuses us any other costs. He has a reason ---

THE CHAIRMAN: Now, what were you asking for? Were you asking for a specific movement on a specific commodity from some place to another place? What were you requesting?

MR. FRAWLEY: I was requesting at this time -- I am in consultation with consultants, and I would ask Mr. Sinclair for a representative number of costs on these various other kinds of traffics. I would say that I would like to have a cost analysis of a certain number of agreed charges; I would like to have a cost analysis of some representative competitive rates; I would like to have a cost analysis of some non-competitive and commodity rates; I would like to have a cost analysis of some class rates. Only in that way can my consultants first ascertain the disproportionate contribution to costs of the various segments of the rate structure. That is my cardinal proposition, sir. I say the Commission must know what are the various kinds of traffics, and the contributions to costs made by the various traffics on the railway. There is a great variety of them, of course, and my friend Mr. Sinclair would





admit that it is essential to us that we know that.

THE CHAIRMAN: Just a minute, Mr. Frawley. Are those available in the present records of the railways?

MR. FRAWLEY: Mr. Chairman, he is preparing that in the most elaborate detail in regard to the Crow's Nest Pass rates. I ask nothing more than the same kind of analysis.

THE CHAIRMAN: That is not an answer to my question. You, apparently, expect Mr. Sinclair to give you, or be prepared to give you, certain figures, and so on. The question I asked you was: Do you know, or did it come out, that those were available in that form at this time?

MR. FRAWLEY: I will answer you as fully as I can. If you mean to ask if I could send someone in there to get those costs now, then the answer is No. Are they available now in public records? The answer is No. Each one has to be worked out. The railways did it on very many occasions before the Board of Transport Commissioners, and for a time there was a willingness to disclose those costs to interested parties, but commencing, I think, with the agreed charge on automobiles, or one of those cases, they changed their position, and the Board upheld them, and I want to state why because there is a reason.

There is nothing capricious about the







attitude of the railways. The railways say: "If we tell you the fully distributed cost, the whole cost picture on a per ton mile basis, or whatever other basis you use, it will be snatched up by our competitors, and our competitors are not entitled to that information." That is a perfectly good reason, and I have to meet that, and that is what I hope to discuss this morning with the Commission.

I say, sir, that the fact that my friend thinks that in giving some costs like the costs in connection with the Crow's Nest Pass rates may do him some harm vis-a-vis his competitors, and giving other costs may do him some harm vis-a-vis other competitors, or just some competitors, is not sufficient reason for refusing us who are here to assist in the work of the Commission and to present what we think is a case to the Commission. That is not a reason for refusing that information.

I certainly want to stress -- and as I said before, I am not doing it to be dramatic, but unless the figures which show the disproportionate contributions to total rail costs made by various segments of the traffic are made available to me and to my consultants then my efforts to submit anything useful to the Commission will end right here. I simply cannot accept the role of spectator at the demise of the Crow's Nest Pass rates. The Government of Alberta certainly did





not ask me to come here to the Commission to be a spectator at the demise of the Crow's Nest Pass rates and then go home. I have something much more serious to do on behalf of the people of Alberta than that.

THE CHAIRMAN: Now, the other part may not have been dramatic, but when you talk about the demise of the Crow's Nest Pass rates then you are being very dramatic. You are not justified in ---

MR. FRAWLEY: I am quite willing to have anything dramatic stricken from the record. It was a constructive suggestion to the Commission as to what is really wrong with the Canadian freight rate structure that I wish to give, but I will certainly retire in frustration if I am refused the tools with which to do the job.

I petition your Commission to direct the Canadian Pacific and the Canadian National to supply the information I have asked for which is needed by my consultants who are potential witnesses. I have to make that application to the Commission and ask for a ruling because counsel for the Canadian Pacific said that that information certainly would not be forthcoming unless the Commission so ruled.

MR. MAURO: Mr. Chairman and Mr. Commissioners, I will not take any appreciable length of time in supporting the contention of counsel for Alberta, but I would be remiss in my duty to the







Province of Manitoba if I did not strongly urge the Commission to ---

THE CHAIRMAN: Did you take a part in this conference?

MR. MAURO: Yes, I did, Mr. Chairman, and I want to reiterate my feeling of concern over a change in the atmosphere that might enter into this Commission's hearings from yesterday. I want to underscore what I said yesterday, Mr. Chairman and Commissioners, on behalf of the Province of Manitoba, that we do approach this Commission's hearings, to repeat the words of the Chairman, with a feeling of cooperation, and with an intent that the results of the Commission will benefit the whole of Canada and not one particular section. We have done some little work in the Province of Manitoba in the preparation, but we felt it would be completely impossible to constructively assist this Commission without fairly detailed information as to this question of burden and the national economic policy.

I have no resentment -- nor was I surprised -- in that Mr. Sinclair, on behalf of the Canadian Pacific Railway, wanted to limit this to a particular cost analysis. There is no obligation on the part of Mr. Sinclair to put in a case for other people, and the time involved in these studies is fairly extensive. On the other hand, Mr. Chairman, I am sure Mr. Sinclair will be paying a compliment to us





when he says he is not surprised at our desire, on the part of the people that we represent, to have the necessary information which will enable us to play a real part in these deliberations.

Now, this question of inequities is very real, and this Commission, in seeking to ferret out whether there are inequities, must also submit to the Governor in Council its conclusions as to whether there are inequities, and what might be done to alleviate the burden on the shipper. This cannot be done with a look at a limited sphere of freight movement, namely, that at the statutory grain rates. Right now, sir, in Winnipeg, Edmonton and Saskatoon there is a hearing before the Board of Transport Commissioners concerning the cancellation of a C.P.R. passenger service, Trains 41 and 42. In the newspaper reports, or the reports in the Free Press, of those hearings it appears that witnesses for the C.P.R. have testified under oath that the reason they want to abandon this particular passenger line is that it has been losing \$500,000 a year since dieselization, and \$750,000 a year prior to dieselization. This, I suggest, is a fairly large amount of money when extended over a period of time, and this is only one segment of a fairly vast passenger service.

We suggest that this Commission will be very interested in determining the burden of the







passenger services on the freight shipper. There is a document, sir, called the Waybill Analysis, which is put out annually and gives certain information. It is based on a one per cent sample of traffic in Canada, and under that document we find -- and I am referring to the 1958 document -- that the statutory grain rates returned an average revenue per car-mile of 27 cents. As we proceed through this document we note that in the case of poultry and dressed poultry there is a return of 29 cents per ton-mile.

MR. SINCLAIR: Per what?

MR. MAURO: Per car-mile. In the case of coke it is 18 cents. Remembering always that the statutory grain return was 27 cents, coke returned 18 cents.

THE CHAIRMAN: What is that?

MR. MAURO: Coke. Ores and concentrates returned 22 cents, and the Crow's Nest Pass rates, 27 cents.

THE CHAIRMAN: I do not think, Mr. Mauro, that we are unaware of inequities and alleged inequities.

MR. MAURO: Mr. Chairman, I want to make that clear, that I was under no misapprehension that this Commission was acceding to the submission of Mr. Sinclair as to the limits of its investigative powers. What I am suggesting, Mr. Chairman -- and perhaps I may be forgiven for this thought -- is





that perhaps the Commission was not aware of what was needed from a procedural standpoint in order to facilitate the work of the provinces in preparing our case. I am only presenting this evidence for what it is worth to support our contention that there are other fields that might require investigation; that if we are to determine burdens then we must look at the whole freight rate structure.

I support my learned friend Mr. Frawley in requesting that this Commission direct that the information be made available. If there is some method by which we can safeguard the secrets of the C.P.R. against their competitors then we will certainly agree to them, but we submit we will be hamstrung in our work before this Commission without that necessary information.

MR. MacKIMMIE: Perhaps I should precede Mr. Sinclair. I was at this meeting as well.

MR. SINCLAIR: I thought we had two subjects. That was a different subject.

MR. MacKIMMIE: I think I should speak to the second subject.

MR. SINCLAIR: I was going to leave that to Mr. Cooper and see what he said, and then maybe the Commission need not hear from you or me.

THE CHAIRMAN: I do not understand you. There were two subjects?

MR. SINCLAIR: That is right. I was going







to answer Mr. Frawley and Mr. Mauro on the subject they dealt with. The subject that Mr. Frawley and also Mr. MacKimmie were dealing with is another matter, and I thought we had reached agreement on it and I left that with Mr. Cooper. I thought he would deal with it subject to anything that Mr. MacKimmie might want to say having regard to the arrangement that is made.

THE CHAIRMAN: Are you speaking to the same subject that Mr. Frawley and Mr. Mauro have spoken to?

MR. MacKIMMIE: They are interwoven, sir. My reference was to costs of the Crow's Nest Pass rates, but I might well have misconceived the purpose of this meeting. As I understood it, it was an organizational meeting for people to come and express their views as to what they felt the Commission should hear and what should be done. I was surprised to see it develop somewhat into a hearing with legal arguments, and I was delighted to hear you say this morning that no one on the Commission knew that this was going to turn into a preliminary hearing on the Crow's Nest Pass rates. Certainly after yesterday's meeting, whether through stupidity or ignorance, a lot of people had that view, and I was delighted to hear you clear it up.

Now, Mr. Chairman, I cannot conduct a





case on behalf of my client, or the case I want to put before this Commission, unless I have full information as to the Crow's Nest Pass ---

THE CHAIRMAN: Mr. MacKimmie, Mr. Sinclair has indicated -- and I know because we have dealt with it, and if you do not mind taking my word for it, and you will have an opportunity to speak to it -- that that matter has since yesterday been worked on at the instance of the Commission, and you will hear about it in a few moments. Perhaps you do not mind waiting until then?

MR. MacKIMMIE: If you please, sir.

MR. BLAIR: I speak on behalf of Mr. Brazier who is counsel for British Columbia and who is not able to be here this morning. I would like to refer briefly to Mr. Brazier's remarks yesterday when he pointed out that for the proper conduct of the work of this Commission the fullest possible information on railway costs would be required. He also made the remark, which I think is in keeping with your own judgment of the proceedings, that to the greatest extent possible this investigation should be removed from the realm of controversy, and that a great number of these studies of the costs and other technical matters might properly be carried on or on behalf of the Commission itself and removed from the area of partisan controversy.







With this reservation I submit that as much information as can properly be passed on to other parties, with proper safeguards to the railways from their standpoint, should be passed on so that the public discussion of these matters can be carried on intelligently before the Commission. It is our submission that this information on costs is vital to the work of the Commission, but, that, perhaps, a great deal of it might be carried on by the Commission and its staff themselves.

MR. SINCLAIR: Mr. Chairman and members of the Commission, the position of the Canadian Pacific in regard to the matter raised by my friends Mr. Frawley and Mr. Mauro, and spoken to by my friend on behalf of British Columbia, although in quite a different way. I ask the Commission to note that it is the purpose of the Canadian Pacific---

THE CHAIRMAN: I am sorry, but I cannot hear you.

MR. SINCLAIR: It is the purpose of the Canadian Pacific to provide in so far as it is able, and within commercial safeguards and limitations of time and cost, all possible help to the Commission because there is no one more interested than the railways -- and the Canadian Pacific and Canadian National are equal in this -- in having sound railways and having them financially sound. I said when I opened the remarks yesterday that





there would be no disagreement on that, and it is not our purpose, and certainly not my instructions, to enter into controversies with Mr. Frawley or with anybody else who may appear. They may have, and can have, different ideas, and if they do not fit in with the instructions I have I will challenge them, and I think that is the way the Commission will get the best advantage of having people present their different views, if there is a difference in views, as strongly as they can. I would like to make that clear because there seems to be by inadvertence, or, possibly, by the acoustics of this room, difficulty on the part of some of my friends in understanding our position. We are not here to hamper people in arriving at the truth. If the truth is what Mr. Frawley wants, and justice is what he wants, as he was kind enough to remind me of in a little story, he may be very sorry that he gets it, but that is what our purpose is. That is the only purpose we are going to serve, to bring out the facts and to endeavour to get justice in the light of all the arguments.

I am not interested in controversy, and neither are my clients, for controversy's sake, but we are interested in the importance of pointing out the issues and the facts as we see them.

Mr. Frawley, on behalf of the Province of Alberta, says he needs specific cost information







on movements from a point in eastern Canada to a point in western Canada. He knows, and his clients know, that that is subject to competition. It is subject to competition from overseas markets, and it is subject to competition within Canadian markets. The Canadian Pacific Railway and the Canadian National Railways have had this issue before them, and they refuse to disclose the information on cost because of the assistance it would give to their competitors, and would, therefore, probably, or possibly, if you will, enable their competitors to have information concerning the railways that the railways do not have concerning them. It is information that the competitors of the railways, in certain instances, could use to their own advantage and to the disadvantage of the railways and to the disadvantage of other shippers of commodities by rail. It was for that reason, and for that reason alone, that the railways refused to give the information.

Another specific was put by Mr. Frawley to me yesterday, and it was one that he had put at another place and at another time, which had to do, as he mentioned, with the movement of automobiles. Now, he had a specific reason, and the reason was that he was representing a specific interest ---

MR. FRAWLEY: The people of Alberta, and no one else.

MR. SINCLAIR: The people of Alberta, Mr.





Frawley, are like the people of a lot of other places. They do not speak with one voice, and no matter how clear your instructions are I think the Canadian Pacific is just as anxious to have the people of Alberta prosper as you are because the Canadian Pacific is a resident of Alberta also.

MR. FRAWLEY: Mr. Chairman, you said we should not get into a controversy, but I cannot permit my friend to leave it in that way. The question of the movement of automobiles occurred during a hearing we had before the Board of Transport Commissioners when I was representing the people of Alberta. Who was I representing? The truckers? I resent that implication, sir. I simply cannot accept that.

MR. SINCLAIR: My friend is unduly sensitive. There are different views among the people of Alberta. The point is that we have been requested this cost information with regard to these matters, and in some of these cases where we did have it we did supply it to people who were in a position to deal with it and to consider it, and not to disclose it to our competitors, to deal with it in a way that our competitors could not get it. The Canadian Pacific Railway would be willing, and would be anxious, to cooperate in any way that is reasonable and just, and I told Mr. Brazier that. I explained to Mr. Brazier that we could not give







movements and costs from A to B on certain commodities. He recognized that. I told him the thing to do is to see what he can do, and to see what we can do, having in mind commercial safeguards. I had no trouble at all when I spoke to Mr. Frawley here. Our whole approach to it was on the basis of public co-operation.

Mr. Frawley says that I am willing, eager and anxious -- and I do not know what other adjectives he used -- to supply the costs on the movement of grain. There are costs on the movement of grain---

THE CHAIRMAN: Well, you have been in the process of preparing that?

MR. SINCLAIR: That is right, ever since the Order in Council was issued. I started to get certain things under way at that time which we felt would be of assistance to this Commission in the light of the terms of the Order in Council, but I think it would be a very retrograde step in an effort towards solving the railway transportation problems of this country to force the railways to make available information that would be of advantage to their competitors.

If there is any way in which we can assist in developing the information before the Commission then we will be happy to hear of it -- that is, information as to the freight rate structure. If Mr. Frawley and his experts, or Mr. Mauro





and his experts, or Mr. Brazier and his experts can present material that will assist the railways in securing a better operation, a more profitable operation and one that is more financially sound than the one we have now, we would be glad to see it, and we would help them in every way we can. But, you do not do that by making available for transitory advantage or regional advantage information that can cost the railways very substantial revenues without any advantages at all. That is our position, and I think it is not a new position. It is a position that I think every business has to take when it is in competition with other forms of business.

MR. McDONALD: Mr. Sinclair's remarks apply to the Canadian National in the same way as they do to the Canadian Pacific. This whole matter was argued out before the Board of Transport Commissioners, and we took the same position then, and there is nothing I can add to it.

THE CHAIRMAN: Have you anything further, Mr. Frawley?

MR. FRAWLEY: I have nothing more to say except to emphasize what my friend Mr. Mauro said to me, that it is remarkable having regard to the ingenuity of the Canadian Pacific that they could not devise some method of giving us that information. I have told Mr. Sinclair that that information could be sent direct to my consultants in







New York City, or wherever he might suggest.

THE CHAIRMAN: Yes? Is there anything more?

MR. MAURO: No.

THE CHAIRMAN: On this matter we will reserve any decision at this time, but we will endeavour to bring in a ruling at an early date. One of the reasons is rather obvious. I would like Mr. MacPherson to be able to participate in any discussion or ruling that we make, so we will leave it on that basis at the moment.

There is another problem that Mr. MacKimmie is obviously interested in, and perhaps that can be spoken to now. Whether Mr. Cooper or Mr. Sinclair or ---

MR. SINCLAIR: I think Mr. Cooper, whom we invited to attend this meeting, might do it, and if there is anything that Mr. MacKimmie wants to add at the conclusion, or I want to add, we can do so then.

MR. COOPER: Mr. Chairman, at this conference of yesterday, which has already been referred to, Mr. MacKimmie asked that a cost analysis be made available with respect to movements under the Crow's Nest Pass rates. I understood Mr. Sinclair to say that such costs would be readily made available to Mr. MacKimmie, and that Mr. MacKimmie's expert could get in touch with the railways, and if any questions





then developed as to what should be supplied to the experts those questions could be resolved either by consultation between Mr. MacKimmie and Mr. Sinclair and myself, or, failing that, by reference to the Commission, so I do not think that there is any problem left with respect to the provision of those figures in so far as the statutory grain rates costs are concerned.

There was another matter which was the subject of some discussion yesterday, and perhaps I might proceed to that now. It was intimated, I believe, that it would facilitate matters if questions concerning the statutory grain rates were heard by the Commission before the Commission proceeded to the regional hearings in the western provinces. In order that that be done it would be necessary to have a hearing in Ottawa probably early in December restricted to this question. I spoke to my friend Mr. Sinclair on this point, and I understand from him -- and he is speaking also for the other railway -- that he would produce a brief of the railways on the Crow's Nest Pass rates question by October 15, 1959, and a precis of evidence by November 1st. That would give a period of something probably in excess of a month to enable people to prepare for a hearing here in Ottawa on this question of the Crow's Nest Pass rates.







I understand that the submissions of the railways will include suggested solutions to the problems which they consider they have on this question. I believe, also, that Mr. Sinclair would like to have, and expect to have, the cross-examination by the provinces and other interested parties to take place at that hearing in the early part of December. The railways would be prepared to confer with the experts from the provinces, the wheat pools, and United Grain Growers Limited, whenever those experts are ready to sit down with the railways. That could proceed as soon as the experts can get together and get in touch with the railways.

I believe that is the general understanding reached yesterday at the conference which has been referred to, and also the understanding which I have reached with Mr. Sinclair with respect to this possible hearing in Ottawa in the early part of December, but perhaps Mr. Sinclair will correct me if I have misstated anything, or omitted anything, and Mr. MacKimmie likewise if I have said anything that he did not understand to be the case arising out of our conference of yesterday.

MR. MacKIMMIE: Mr. Chairman, I take it that the Commission is going to consider the Crow's Nest Pass rates?

THE CHAIRMAN: Well, this is all subject





to a ruling that has to be made. We hope to make it this morning before we leave.

MR. MacKIMMIE: As I said yesterday, my primary, if not exclusive, interest on behalf of my clients is in the Crow's Nest Pass rates. Mr. Sinclair has said he will make everything I require available, and I am certainly satisfied with that, sir.

I did, I believe, say two things yesterday. First, I said that in the event this hearing went ahead and there was sufficient proof to satisfy the Commission that the rates were non-compensatory that I would want to see if any relief could be tied directly to the Crow's Nest Pass rates. I think the phrase was used "use them as the whipping boy", but if Mr. Sinclair or myself or my own experts, for our own purposes, ask for any rates which affect his competitive picture then we will require them and, of course, the information on losses on passenger traffic and other things so that I will be in a position to say to the Commission that while this is so if there is to be any relief it should not be tied to the Crow's Nest Pass rates; that other aspects of the railways should be tied into the picture.

MR. SINCLAIR: Passenger traffic will be right in that picture.

THE CHAIRMAN: What is that?







MR. SINCLAIR: I am trying to close this up. The passenger deficit factor is a factor which will be worked out and made part of this study, because it is a portion of that that goes over onto the undistributed costs.

THE CHAIRMAN: Yes. Mr. MacKimmie, may I say this to you now, that when you, among others, advanced -- and quite properly advanced -- the proposition that it would be very difficult, and perhaps not a good thing, for the Commission to take on regional hearings until this matter of the Crow's Nest Pass rates, if it has to go on, was dealt with in this way may I say that it is the Commission that has taken the initiative to try and get a schedule which will fit in with that, and that is what we are trying to do. We have to get on with what we have to do.

Now, then, the railways have agreed to facilitate you in connection with what you expressed yesterday, and what you wanted to have, and now you have a definite schedule and the Commission has a definite schedule, and we have to come to some decision with regard to when we will be conducting the regional hearings in the West. That is the very intention of it all. We cannot simply leave that in complete abeyance ---

MR. MacKIMMIE: I am sorry, sir, but I am not following you. I do not think I have said





anything in reference ---

THE CHAIRMAN: No, no; you have not, but I am only supplementing what our counsel has said in regard to the reasons why we have endeavoured to persuade the railways to go on with this in December.

MR. MacKIMMIE: Yes, sir, and I will, on behalf of my clients, undertake to you, sir, that we will do everything we can to facilitate early hearings, but not to the point that it will prejudice the position we have to take because we would be of no value to the Commission in that way. If we get the timing that Mr. Sinclair thinks, and I am sure he is sound, I will immediately have that information in the hands of such experts as I have, and will do everything in my power to be in a position to cross-examine in December. I advised you yesterday, sir, that my information to date is that our experts could not prepare their own submission until the spring of 1960.

THE CHAIRMAN: Yes, I know.

MR. MacKIMMIE: That may be the subject of another matter, but I will certainly convey to them the desire that it be done at an earlier date. It would be silly for me to undertake that, not knowing ---

THE CHAIRMAN: You can get your experts in with the railways' at any time now.

MR. MacKIMMIE: I did not understand that.







I thought it would be October.

THE CHAIRMAN: No, at any time now.

MR. SINCLAIR: Get them up as soon as you can, and we will start.

MR. MacKIMMIE: Yes, sir.

THE CHAIRMAN: Thank you. Now, gentlemen, I think, if you do not mind, we will take a recess of ten or fifteen minutes so that we may consider the matter of the two other rulings which appear to be involved, namely, the one with respect to the labour relations and the one in respect to the admissibility of evidence and records of the statutory rates.

---Short recess.

THE CHAIRMAN: Gentlemen, we have considered our rulings in respect to the matters on which rulings were requested yesterday.

No. 1 is this: The Commission is unanimously of the opinion that under the terms of its reference evidence in regard to the effect, costs and financial consequences of statutory rates is admissible, as is also evidence in relation to benefits and advantages to the railways arising from the establishment of such rates by agreement or otherwise, and so rules.

The other is: In connection with the submissions received yesterday in regard to the





Commission admitting evidence on general labour relations and alleged restrictive practices we all are of the opinion that in view of the fact that these relations are governed by voluntary collective agreements and that there exists legislative machinery for dealing with the collective bargaining process, and that the Canadian Labour Relations Board has jurisdiction in some of the matters, and that the Department of Labour is presently inquiring into some of these matters in connection with suggested amendments to the Industrial Disputes Investigation Act, such evidence is not admissible, and we so rule. This ruling is subject, however, to proof or evidence of conditions which are contemplated in specific sections of the Railway Act or in the Canadian National-Canadian Pacific Act, or the Transport Act, mostly in regard to separation and that sort of thing. That may prove to be a relevant part of labour here, but we do not know. However, at this time we are accepting that as a general rule.

I might say at this time for the benefit of people who, perhaps, have some interest in the proposed activities of the Commission, that we propose to try and arrange regional hearings at the City of Toronto in Ontario and the City of Montreal in Quebec, and at the City of Quebec, if necessary, during the week of October 19th. I do not intend







to imply that those arrangements are made, but we propose to try and make them. After that, some time in November -- and we are thinking of commencing about November 9th -- we will hold regional hearings in the four eastern provinces -- the maritime provinces -- commencing at St. John's, Newfoundland. After that we have in mind, as indicated this morning, the hearing here in the early part of December in reference to the Crow's Nest Pass rates together with cross-examination. Just where we go from there we do not know at this time, but that is what we are hopeful of.

If there are no other submissions relating to the ---

MR. BLAIR: Mr. Chairman, I hesitate to interrupt, but I was the person yesterday who raised on behalf of the British Columbia Lumber Producers the question of an investigation of labour costs.

THE CHAIRMAN: Yes?

MR. BLAIR: Undoubtedly, I may have created a wrong impression when I referred specifically to restrictive practices, but one of the great features of the inquiry must be an investigation of costs and the efficiency of operation of the railways, and the utilization of railway labour which, as the Board well knows, is the largest single item of expense on the railways and which





has occasioned the last two rate increases.

My clients, and, undoubtedly, other business interests in this country, are going to be seriously disturbed to learn that the Commission will not receive evidence, if I understood your ruling correctly ---

THE CHAIRMAN: That is correct.

MR. BLAIR: --- on anything having to do with the utilization of railway labour.

THE CHAIRMAN: That is correct. The ruling has been made.

MR. BLAIR: My question is this, Mr. Chairman, whether in connection with the studies of cost which may be made by the Commission, and which may be made by other parties, the Commission will permit the studies to embrace a survey of labour costs and labour utilization.

THE CHAIRMAN: We have just ruled that it would be inadmissible.

MR. BLAIR: Well, I rise merely to clarify the point, and I wish to thank you.

MR. SINCLAIR: I have one point in clarification, if I may. In the light of this we would have a brief to file in regard to some other matters which would be relatively short and which, I take it, in view of the tentative outline you have given, would be received by the Commission some time after the first of the year.







THE CHAIRMAN: Well, it would appear that way. We have no objection to your filing earlier if you wish.

MR. SINCLAIR: No, but I wanted to make it clear that in view of the arrangements and what we have ahead of us we are going to be pretty busy people in regard to the other material and the précis we have to get out, and I would hope that the Commission recognizes that.

THE CHAIRMAN: Yes. In connection also with the regional hearings the parties will be receiving notice from the Secretary of the Commission that any briefs which it is proposed to present will be received, or are required to be received, fifteen days before the hearings take place.

I now announce an adjournment to the call of the Commission through notice to parties interested.

---Whereupon at 12.15 p.m. the hearing adjourned sine die.













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